

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3
4 In the Matter of :
5 Lester R. Diehl. : Case No. 09-1929-TR-CVF
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9 PROCEEDINGS

10 before Mr. Kerry Sheets, Hearing Examiner, at the
11 Public Utilities Commission of Ohio, 180 East Broad
12 Street, Room 11-D, Columbus, Ohio, called at 10:00
13 a.m. on Tuesday, April 20, 2010.

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11 On behalf of the Staff.

12
13 Mr. Lester R. Diehl
14 9623 Snapp Road
15 DeGraff, Ohio 43318

16 On behalf of the Respondent, Pro Se.

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1 Tuesday Morning Session,

2 April 20, 2010.

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4 HEARING EXAMINER: Public Utilities
5 Commission of Ohio has set for hearing at this time
6 and place Case No. 09-1929-TR-CVF, being in the
7 Matter of Lester Ray Diehl, d/b/a Ray's Trucking.

8 My name is Kerry Sheets, I'm an attorney
9 examiner assigned to hear this case.

10 May we now have the appearances of the
11 parties please.

12 MS. PARROT: Good morning, your Honor.
13 On behalf of the staff of the Public Utilities
14 Commission of Ohio, Richard Cordray, Ohio Attorney
15 General, Duane W. Lucky, Section Chief, by Thomas G.
16 Lindgren and Sarah J. Parrot, Assistant Attorneys
17 General, 180 East Broad Street, Columbus, Ohio 43215.

18 HEARING EXAMINER: Thank you.

19 Mr. Diehl, go ahead and state your name
20 and address.

21 MR. DIEHL: Lester Ray Diehl, 9623 Snapp
22 Road, DeGraff, Ohio 43318.

23 HEARING EXAMINER: Very good.

24 Do you have any witnesses to call this
25 morning?

1 MS. PARROT: Yes, your Honor. The staff
2 would begin by calling Inspector Robert Barrett to
3 the witness stand.

4 (Witness sworn.)

5 HEARING EXAMINER: Please be seated.

6 - - -

7 ROBERT J. BARRETT, JR.

8 being first duly sworn, as prescribed by law, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 By Ms. Parrot:

12 Q. Good morning, Mr. Barrett. Could you
13 please state your full name for the record?

14 A. Robert James Barrett, Jr.

15 Q. How do you spell your last name please?

16 A. B-a-r-r-e-t-t.

17 Q. Thank you.

18 What is your business address?

19 A. I work out of the Columbus office, 180
20 East Broad Street. I am a field staff member
21 assigned to Wapakoneta, Ohio.

22 Q. And who is your employer?

23 A. The State of Ohio, the Public Utilities
24 Commission of Ohio.

25 Q. And what is your role with the Public

1 Utilities Commission of Ohio?

2 A. I'm a hazardous materials investigator.

3 Q. What are your duties or responsibilities
4 in that position?

5 A. We ensure compliance with Federal Motor
6 Carrier safety regulations and the hazmat regulations
7 and the Ohio Administrative Code upon motor carriers
8 and commercial motor vehicle drivers, conduct safety
9 audits on uniform carriers, and we do roadside
10 inspections and incident follow-up if there's a
11 hazmat spill relating to transportation.

12 Q. And what equipment has been issued to you
13 so that you may perform your job?

14 A. I'm assigned a marked State of Ohio
15 enforcement vehicle, uniforms, electronical
16 equipment, laptop, scanner, administrative supplies.

17 Q. How long have you worked for the Public
18 Utilities Commission of Ohio?

19 A. Just about eight and a half years. I
20 started mid-December of '01.

21 Q. And over the course of those eight and a
22 half years, approximately, have you been employed in
23 your current position or have you had other roles
24 with the Commission?

25 A. No, entirely hazmat specialist.

1 Q. Where were you employed prior to your
2 employment with the Commission?

3 A. Department of Public Safety with the
4 State Highway Patrol.

5 Q. And what was your role there?

6 A. I was a state trooper.

7 Q. How many years were you employed as a
8 state trooper?

9 A. About 16 and a half.

10 Q. Thank you.

11 Do you hold any certifications or have
12 you received training that helps you to perform your
13 job as an investigator?

14 A. Yes. I went through the FMCSR and NTC
15 provided training to provide roadside inspections,
16 vehicle inspections. I've been through the hazmat
17 training, general hazmat, bulk package, cargo tank
18 level, radioactive.

19 I've had compliance review training,
20 safety audit training. Quite thorough training, as a
21 matter of fact.

22 Q. Sounds like it.

23 Are you familiar with the business that
24 operates under the legal name of Lester R. Diehl and
25 does business under the name of Ray's Trucking?

1 A. Yes.

2 Q. Did you conduct a compliance review of
3 that company in August of 2009?

4 A. Yes, I did.

5 Q. What prompted you to conduct that
6 compliance review?

7 A. Federal Motor Carrier Safety
8 Administration Columbus office provided a list of
9 what we call priority carriers, carriers that have
10 been deemed to be deficient in various aspects of the
11 regulations either through accidents, roadside
12 inspections, or possible complaints. And they were
13 provided to me on an assignment list as a priority
14 assignment to do an audit.

15 Q. Where did the compliance review occur?

16 A. It was done at the place of business for
17 Ray's Trucking, and that was at the residence at 9623
18 Snapp Road, Mr. Diehl's residence.

19 Q. Thank you.

20 Was the compliance review that you
21 conducted in August of 2009, was that your first
22 encounter with this particular company?

23 A. As I recall, yeah, it was.

24 Q. Are you aware whether or not this company
25 had been subject to a prior compliance review?

1 A. I'm required to do various background
2 preparation for the audit, and there was nothing to
3 indicate they'd been through it. And in conversation
4 with Mr. Diehl this was his first regulatory contact
5 as far as an on-site review or assessment of their
6 compliance.

7 Q. You mentioned that you performed some
8 preliminary work to prepare, I guess, for the review.
9 Would you please elaborate on that?

10 A. We go into some of the federal websites
11 and obtain their previous performance records. We go
12 through and check they're a for-hire carrier and we
13 go through the federal licensing and insurance
14 website, verify they do have the appropriate
15 insurance on file.

16 We run a motor carrier profile through
17 the motor carrier management inspection, which is
18 basically a database that captures all of their
19 performance.

20 If they're a limited liability company or
21 a corporation, we go on file through the Secretary of
22 State to verify the legal name, that type of thing.
23 That was all done ahead of time.

24 Q. And then once you've done that how do you
25 inform the company that you're going to be conducting

1 this compliance review?

2 A. My personal protocol is that if it's a
3 complaint, we normally or I normally go in
4 unannounced. Meaning I just show up at their place
5 of business. If it's a priority list assignment, I
6 found that it's more beneficial to both parties if
7 you call and make advanced notice and give them some
8 form of a detailed list as far as what records you're
9 going to need to see, give them a chance to get
10 things in place.

11 Q. So did you give some advance notice to
12 the company in this particular case that you would
13 be --

14 A. I made a note in my review that I did. I
15 don't recall, having been so long ago to an extent,
16 but, yes, I did.

17 Q. But you documented that fact that you'd
18 given them some advance notice?

19 A. Yes.

20 Q. What equipment did you use to actually
21 complete the compliance review? How do you go about
22 making the review?

23 A. We do everything electronically. So I
24 have a laptop, we utilize a federal software program
25 and we actually plug in the data from the motor

1 carrier.

2 I have a portable scanner and printer
3 that I take so if there are records that I need to
4 copy or maintain on file for my own, we scan things
5 directly right into the lop.

6 Q. So you mentioned that you used the
7 commuter to plug in information. Does that process
8 then generate some type of report?

9 A. Yes. The present program generates a
10 written version of the audit, captures the violations
11 and logistical information of the motor carrier.

12 Q. And at what point in the process do you
13 prepare that audit report?

14 A. Well, when you first go in obviously
15 you're going to complete part A which is your
16 logistic names, addresses, phone numbers, how many
17 trucks, how many drivers, the extent of their
18 operation, tax ID number, that type of information.
19 That's what we call part A.

20 And then that's done within the first
21 several hours to initiate the review. Then we get
22 into the gathering of information. And that's
23 considered part B of the review that we find enough
24 evidence that substantiates violation of the either
25 the FMCSR or the HMR and that's captured in part B

1 violations.

2 Q. And those acronyms you just used --

3 A. Federal Motor Carrier Safety Regulations
4 and the Hazmat Regulations.

5 Q. Thank you for clarifying that.

6 So would you say that the information
7 that you compiled and input into this report, would
8 you say it's accurate?

9 A. Yes.

10 Q. Because you're doing this at the time of
11 the compliance review itself?

12 A. Yes.

13 Q. And so once you've completed the report,
14 what do you do with it at that point?

15 A. Once the review is completed and copy is
16 printed out and provided to the motor carrier, or in
17 this case Mr. Diehl, we go over the violations in
18 part B -- verify personal part A is correct. Then we
19 go over the violations in part B, make sure he
20 understands what violations pertain to.

21 We have a section called recommendations
22 which anytime we have a violation in part B, we
23 tailor our recommendation and counteract or
24 corrective action of violation.

25 That's done at what we call the closing

1 or exit interview, and then motor carrier or in this
2 case Mr. Diehl would sign for the review. At that
3 point the review is electronically uploaded through
4 the laptop in to the Commission.

5 Q. So the report is sent then to the
6 Commission at that point?

7 A. To Columbus, yes.

8 Q. What types of records are reviewed during
9 the course of the compliance review?

10 A. My method is upon completing the initial
11 interview and trying to ascertain the scope of the
12 company's operation, I go into their insurance, make
13 sure that they have proper insurance on file, which
14 is in part 387 of the Federal Safety Carrier
15 Regulations.

16 Upon verifying that they have the
17 appropriate insurance on file we then crosscheck that
18 against the Federal Motor Carrier Safety
19 Administration licensing and insurance website to
20 ensure that what they're showing us is what's
21 actually on file with the feds, I guess.

22 We then go into accident review. We look
23 at the company's loss run report, we look at their
24 motor carrier management information system database
25 to ensure are there any accidents that I'm aware of

1 in the database that either the carrier is not
2 declaring or vise-versa, sometimes we'll find an
3 accident that they've had that's not on file with us.
4 That goes both ways. We make sure that the proper
5 records are maintained, that's part 390 of the FMCSR.

6 We go into the driver qualification. We
7 want to make sure that the proper records -- that the
8 drivers are properly qualified for the carrier
9 allowing them to operate a commercial vehicle.

10 We go into drug and alcohol testing. If
11 the company operates a CDL vehicle, we want to ensure
12 that they're in compliance with part 40 and 382,
13 which is the requirement for drug and alcohol
14 testing.

15 Go into driving violations in 392. We go
16 into parts and accessories of their trucks in part
17 393. Hours of service, which is what most people
18 would call a logbook, to ensure that the carriers are
19 operating within the hours of service rules.

20 And finally if they're a non-hazmat
21 carrier I finish up with part 396 which deals with
22 the maintenance records and maintaining of their
23 equipment.

24 Q. Thank you.

25 So those types of records that you just

1 gave us an overview of, are those the records that
2 you were reviewing in this particular case as well?

3 A. Pretty much in that order, yes. That's
4 how I go about my review.

5 Q. Thank you.

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

7 HEARING EXAMINER: You may.

8 MS. PARROT: Your Honor, at this time I
9 would ask that Staff Exhibit 1 be marked for
10 identification purposes.

11 HEARING EXAMINER: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Barrett, do you have a copy of what's
14 been marked as Staff Exhibit 1?

15 A. I do.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. Would you please identify it for us?

19 A. It's a recreation or electronically
20 prepared copy of the compliance review through the
21 Capri software that I completed when I did
22 Mr. Diehl's audit.

23 Q. So this report was prepared by you?

24 A. Yes.

25 Q. And a copy of this report was sent to the

1 Commission; is that correct?

2 A. Yes.

3 Q. Did you prepare this report as part of
4 your official job duties?

5 A. Yes, I did.

6 Q. And at this time if you would please
7 direct your attention to the first part of the report
8 which I believe is the first two pages. Would you
9 please give us an overview of the information that's
10 provided in this section?

11 A. That's part A, it consists of page 1 and
12 page 2. And as I previously stated, that is the
13 logistical information for the carrier or subject of
14 the audit.

15 In this case it was Mr. Diehl operating
16 as a sole proprietor. The legal name is Lester R.
17 Diehl, which is his legal name, as a d/b/a of Ray's
18 Trucking, and then the information operation type,
19 all the logistical information that was given to me
20 at the time of the review opening.

21 Q. Would you say that Staff Exhibit No. 1 is
22 an accurate representation of the actual report that
23 you prepared?

24 A. Yes.

25 Q. And is this report compiled in a standard

1 format that's used in each compliance review case?

2 A. Yes.

3 Q. If you'd please turn now to part B of the
4 report. I believe that's the starts on the third
5 page.

6 This appears to contain a summary of the
7 violations that you noted during the course of the
8 compliance review; is that correct?

9 A. Yes. Part B is the violation section.

10 Q. And if you would please take us through
11 the first violation that you've indicated there and
12 let's go through in some level of detail here and
13 start where it indicates in that first box to the
14 left it says "Federal" and then "acute." Do you see
15 that?

16 A. Yes.

17 Q. Would you please explain that to us what
18 that field represents?

19 A. Ray's Trucking operates combination
20 commercial motor vehicle semi tractor/semi trailer.
21 Those vehicles are subject to the CDL required in
22 part 383 in the FMCSR.

23 Any commercial motor carrier who operates
24 or drivers who operate vehicles subject to the CDL
25 requirement, the motor carrier is required to

1 implement a drug and alcohol testing program.

2 Upon initiating my review, I discovered
3 that Mr. Diehl had not initiated a drug and alcohol
4 testing program at that point. The CDL section as
5 with drug and alcohol testing is actually a federal
6 violation. So those rules are going to be the same
7 no matter what state a commercial vehicle requirement
8 the CDL operates.

9 And since Mr. Diehl operates vehicles
10 within Ohio and beyond, he's an interstate carrier
11 and violation was written as a federal violation. He
12 had no drug and alcohol testing program whatever, so
13 upon initiating review.

14 Q. And the designation "acute," what does
15 that refer to?

16 A. An acute is the most serious type of a
17 violation as far as severity that we can discover on
18 a compliance review. I would relate it to a felony
19 in the criminal system.

20 Q. And then I see there it indicates the
21 section 382.115, subsection (a), does that refer to
22 the Federal Motor Carrier safety regulations, is that
23 what that represents?

24 A. Yeah, right, it says they shall implement
25 a drug and alcohol program.

1 Q. And moving over to the right I see
2 there's a field there "Discovered" and also
3 "Checked"? You see those? What do those represent?

4 A. If we are required to check a variety of
5 records under one particular statute, if we're
6 required to look at 30 days of records, that would be
7 under number checked, "discovered" would be the
8 amount of violations or days of violations
9 discovered.

10 Since they don't have or didn't have a
11 drug and alcohol testing program to satisfy FMCSA, we
12 simply recorded as 1 of 1. They had no program, one
13 discovery out of one check.

14 Q. Thank you.

15 And then below that I think you already
16 mentioned there's a description there of the
17 particular violation which I think you've already
18 explained to us. What is the "Example" section?
19 What does that represent?

20 A. For jurisdiction we're required to
21 document a driver's name, a particular date in which
22 the driver would have operated a commercial vehicle
23 in interstate commerce subject to this rule.

24 Q. So it's called an "example." So is it
25 truly an example in the sense that it's just one

1 example of a particular violation?

2 A. Right.

3 Q. It's not a comprehensive list of all
4 violations that you noted?

5 A. No. It's just one day in which I
6 discovered that a commercial vehicle driver subject
7 to 393 subject to 40 and 382 operated a commercial
8 vehicle from Ohio or beyond back to Ohio. And this
9 example was from Illinois back to Ohio without the
10 carrier having implemented a drug and alcohol testing
11 program.

12 Q. Thank you.

13 All right, let's go through the other
14 violations that you indicated in the report. The
15 second one, what did you find there?

16 A. The second one is under part 391 which is
17 in the driver qualification section. The carrier
18 only employed two drivers at the time of the review.
19 So obviously I only have two driver files in which I
20 was required to check.

21 If you look under the violations
22 discovered to check, you'll see checked as two. They
23 only had two which I was required to review.

24 The violation example in No. 2 is
25 actually for a violation of failing to obtain what we

1 call a preemployment MVR on a driver. Which is an
2 abstract printout of the driver's license history
3 through in this case the Bureau of Motor Vehicles for
4 each driver employed.

5 That is required to be made in 30 days of
6 the driver's date of hire. And that's part of the
7 driver's qualification file forever.

8 So in this case I was required to look at
9 two driver qualification files, which I did. I
10 discovered that neither file contained a
11 preemployment MVR that was obtained within 30 days of
12 the driver's reported date of hire.

13 Q. And "MVR" stands for?

14 A. Motor vehicle report.

15 Q. Thank you.

16 And again, there you've noted a
17 particular example --

18 A. That's correct.

19 Q. -- of the trip there.

20 And the third violation please?

21 A. Third violation is continuing under the
22 driver qualification section for using a driver not
23 medically examined and certified during the preceding
24 24 months.

25 Again for the records checked and

1 reviewed there were two driver files required to be
2 checked. I found one driver failed to have a medical
3 certificate as required.

4 All commercial vehicle drivers are
5 required to have a DOT physical or examination done
6 to certain protocol in order to operate a commercial
7 motor vehicle. Those certificates can be issued from
8 30 days up to two years maximum depending on the
9 driver's medical state.

10 If you're in good health, can be granted
11 up to two years total. If you have one of any
12 ailments, maybe high blood pressure as an example,
13 they could issue it for 30 days and require a
14 follow-up.

15 In this case Christopher Diehl, who was
16 Mr. Diehl's son, had a medical looks like 1/21/08 and
17 expired on 1/21/09 and the review was done in August
18 of '09. So he did not renew the certificate after it
19 expired.

20 Q. Continuing on, move on down, the fourth
21 violation there indicates that this is a state
22 violation; is that correct?

23 A. Yes. The first, the first violation as I
24 stated was this drug and alcohol testing. The second
25 and third violations in 391 were in the driver

1 qualifications. So the remainder of the driver
2 qualification was found to be in compliance to where
3 I did not cite a violation.

4 No. 4 goes into part 395 which is
5 actually the hours of service portion of the review.
6 All drivers who operate a commercial vehicle are
7 subject to the hours of service requirements either
8 need to have a timecard if they drive locally within
9 a hundred air miles of their driver's reporting
10 location, or if they exceed a hundred air miles
11 they're subject to actually preparing a logbook for
12 each day in which they operate.

13 They're subject to 11 hours of maximum
14 drive time, which is actually behind the wheel.
15 They're not permitted to drive after 14 hours, which
16 is driving and on-duty time combined.

17 If the motor carrier operates seven days
18 a week, they're governed by what's called the 70-hour
19 rule, meaning in any floating eight-day period, they
20 can't drive after a driver accumulates 70 hours on
21 duty. If a motor carrier operates less than seven
22 days, they're bound by the 60-hour rule.

23 And back to your question, violation No.
24 4 was to indicate, and actually that's what we call a
25 "ghost" violation. May be a little bit confusing.

1 There were actually no violations discovered there if
2 you look under the discovery checked. Thirteen days
3 of records were checked for hours of service but
4 there were no violations discovered.

5 For each time we go in to do a compliance
6 review there's a sample size, we're required to look
7 at sample size of records. In this case the carrier
8 employed two drivers. So as an investigator I'm
9 required to review 30 days of records for hours of
10 service per each driver for a total in this case of
11 60, maybe 62 depending on the months reviewed.

12 If a driver operates within the state of
13 Ohio solely, it can fall under what we call a state
14 code or state violation. It's where the State of
15 Ohio has adopted the federal regulation dealing with
16 the hours of service.

17 Again not to try to confuse you, the way
18 the feds have us report if the driver operates
19 interstate on any given day, the following seven days
20 no matter how they operate, if it's intrastate,
21 within the state of Ohio, or interstate, those seven
22 days are always recorded as an interstate federal
23 day.

24 So out of the record I was required to
25 check, I found 13 days that fell under the state

1 code, there were no violations discovered. So again
2 that indicates zero out of 13.

3 Q. Okay, so you've documented what you did
4 there and what you found but there wasn't a
5 violation.

6 A. You basically have to manipulate the
7 software to let it realize you met the sample size of
8 the records. You're accounting for that 13 days. No
9 violation discovered.

10 Q. Okay. So then the fifth violation there
11 appears to be a federal violation.

12 A. Yes.

13 Q. And that appears to be the same hours of
14 service regulation there that's at issue. It does
15 appear you found some violations what respect to the
16 federal regulation.

17 A. That is correct. The two, violation 4
18 and violation 5 actually go together to indicate how
19 many total records did I review for compliance with
20 the 11-hour rule which is the maximum drive time.

21 So actually I would have checked 33 plus
22 13 which would have been 46 hours or records for
23 hours of service in compliance with the 11-hour rule.
24 And there were three discovered out of the 33 in
25 violation No. 5.

1 The example was 6/2 of '09 Mr. Diehl, Ray
2 Diehl drove for 19 hours since his previous ten hours
3 off. And that was an interstate trip he drove from
4 Saint Marys, Ohio to Sauk Rapids, Minnesota.

5 But again, you're combining 4 and 5
6 together and you're probably asking yourself, well,
7 that's not the required 60 records for hours of
8 service compliance, and I don't mean to jump ahead,
9 but in order to tell you that I met the sample size,
10 if you go ahead to violation 8, you'll see there were
11 additional violations cited for failing to have a
12 record of duty status prepared. When you add the
13 numbers together, you meet the numbers.

14 Q. Thank you for explaining that.

15 Let's move to the next page of part B,
16 that's page 2 of 3. And actually, I'm sorry, I'm
17 getting ahead of myself.

18 6 and 7, violation sections 6 and 7
19 appear to relate again with we've got the state
20 component there and the federal as well; is that
21 correct for the 14-hour rule?

22 A. Yes. Basically I'm verifying the
23 compliance on the same records of duty status for the
24 14-hour rule as I did the state. So the counts are
25 going to be identical in 4, 5, 6, and 7. Which

1 violation 6 being the ghost violation, zero
2 violations discovered, and No. 7 being the amount of
3 records that were found to be in violation.

4 Q. With respect to section 8 there,
5 violation 8.

6 A. Violation 8 were days in which there were
7 no records of duty status prepared which they should
8 have.

9 Q. Then No. 10 looks like we're moving to
10 part 396 of the Federal Motor Carrier safety
11 regulations.

12 A. Right.

13 Q. What's part 10? I'm sorry, violation 10.

14 A. Violation No. 10, correct, it is in part
15 396 which is maintenance and 396.11 is the DVIR
16 requirement. It is a written report of what we call
17 the driver vehicle inspection report which is where
18 the "DVIR" comes from obviously.

19 It's a record of a post-trip inspection.
20 On any given day when a commercial vehicle was
21 operated either intrastate commerce, within the state
22 of Ohio, or beyond, interstate commerce, at the
23 completion of that driver's tour of duty on any given
24 day they're required to give a post-trip inspection
25 and give a written record of that inspection for each

1 unit, for the truck and the trailer.

2 And the record retention on the DVIR is
3 90 days from the date of completion. So violation
4 No. 10 and violation No. 11 actually go together.
5 The carrier failed to require the drivers or their
6 drivers to do a DVIR, so there were essentially no
7 records to look at.

8 What I had to do was then go through and
9 document each day in which a vehicle was driven, a
10 commercial vehicle was driven in intrastate commerce,
11 each day they were driven in interstate commerce.
12 It's a combination vehicle which his were a tractor
13 and a trailer would be considered two missing
14 records. So there were 32 out of 32 under federal
15 and 32 out of 32 under the state section.

16 Q. So 10 pertains to the state section and
17 11 pertains to the federal section for the interstate
18 trips.

19 A. That's correct.

20 Q. Several of these violations I notice
21 indicate that they're critical violations as opposed
22 to we talked about the acute violation earlier and
23 what that meant. What does "critical" indicate?

24 A. "Critical" indicates a pattern of
25 non-compliance. As an example, on hours of duty

1 status, if the required sample size would be 60, if
2 you meet or exceed 10 percent of your sample size, it
3 can trigger a critical violation. It just indicates
4 that the non-compliance is more widespread where an
5 acute violation it simply has to occur one time.

6 Q. Thank you very much for explaining that.

7 And then on the last page of part B,
8 that's page 3 of 3 of part B, it indicates that the
9 proposed safety rating is "conditional." Would you
10 please tell us what that means? How that's
11 determined?

12 A. As the investigator I go in and I review
13 the records and if I can substantiate a violation,
14 it's cited in part B as we just went through. The
15 software program will decipher and calculate that
16 safety rating by itself based on the violations that
17 have been input into the program.

18 Q. Okay.

19 A. So there's really no way for me to take a
20 compliance review and give somebody a better rating
21 in which they would have normally received. It's all
22 done electronic, I really don't have any role over
23 that.

24 Q. And what is the significance of receiving
25 a conditional rating for the carrier?

1 A. Currently under the program that we
2 operate, a motor carrier, once they go through an
3 enforcement audit such as this, they can either be
4 one of three ways: They can either be a
5 satisfactory, which is as good as can you get, you
6 may be low end on the satisfactory, you may be high
7 end.

8 Conditional is middle of the road.
9 You're not perfect but yet in an unsatisfactory would
10 be the bottom of the spectrum. If somebody flat out
11 is not in compliance, they're going to receive an
12 unsatisfactory rating.

13 So in this instance the carrier came back
14 conditional. Which in my experience having never
15 been through an audit really is not unrealistic or
16 uncharacteristic for a carrier to receive a
17 conditional rating first time around.

18 Q. Thank you.

19 Let's turn the page to part C of your
20 report please. And would you please tell us what
21 this part, the purpose of this part is?

22 A. Part 3 is something -- part C is
23 something that I complete once the review is
24 completed at the motor carrier. It's basically a
25 synopsis of what I encountered from first contact

1 through the completion of the review.

2 I put a little bit more detail in my part
3 C probably than some investigators do, but really
4 part C, the intention of that is to be available for
5 subsequent investigators when they go in what did the
6 investigator previously encounter within this
7 company. And like I said, it's a recap really of
8 what I discovered at the time I walked in the door.

9 Q. So that would be the "Remarks" section
10 that you're referring to there specifically?

11 A. Yes.

12 Q. Kind of a narrative summary of what you
13 found during the course of the compliance review? Is
14 that a fair statement of what that represents?

15 A. Yes.

16 Q. And then at the top of the part C I see
17 there it indicates that the reason for the review
18 again was that this company was on the priority list
19 that you explained to us earlier.

20 A. Yes, that's correct. I apologize, I
21 skipped right down to "remarks."

22 Q. Quite okay.

23 And then it also indicates -- actually I
24 should jump back there. Indicates "Safestat,"
25 category "E." What does that refer to?

1 A. It's an alpha character that's provided
2 by FMCSA with an alpha character A being someone
3 who's on the higher non-compliance, where an H or an
4 I which would be the highest or the best of the
5 Safestat priority which you can be. That's really
6 about the best way I can explain it.

7 Q. So it's a classification basically?

8 A. Right. If I have six carriers to audit
9 on my list, they prefer that we knock out -- start
10 with your A carriers, B carriers, and work your way
11 down your list.

12 Q. Okay. And it indicates there that the
13 planned action was "compliance monitoring"? Does
14 that indicate that in the future that the company is
15 subject to continued monitoring or what does that
16 refer to?

17 A. Yes. Yes, that's correct.

18 Q. And then below that you've already given
19 us a very good overview of the various parts of the
20 Federal Motor Carrier safety regulations that you
21 conducted your review based upon those sections, this
22 part, and I can -- that's all summarized there as
23 well; is that right?

24 A. Yes.

25 Q. And then the "Remarks" section, you

1 already kind of mentioned that for us. Is there
2 anything you would like to change or correct in your
3 remarks section?

4 A. No.

5 Q. It's a fair characterization of what you
6 found during the course of the compliance review?

7 A. Yes. As I said, it was prepared right at
8 that time.

9 Q. Thank you.

10 Did you interview anyone at the company
11 during the course of the compliance review?

12 A. I just worked with Mr. Diehl himself. He
13 was the person that retrieved records upon request
14 and if there were areas of non-compliance, like as an
15 example in the DVIR, tried to go over what he needed
16 to do in the future.

17 I don't recall, I think his son may have
18 stopped in or out at one point, but I don't know if I
19 actually interviewed him as far as official interview
20 other than just an introductory.

21 Q. So you primarily were working with
22 Mr. Lester Ray Diehl?

23 A. Yes.

24 Q. And you did it sounds like have a
25 discussion about what you found and what's required

1 under the regulations; is that correct?

2 A. Yes. He wasn't subject to the safety
3 audit program. The safety audit program was an
4 educational outreach program designed by FMCSA but he
5 was established prior to and was not applicable to
6 following the safety audit program.

7 As I said, it's not uncommon or
8 uncharacteristic for somebody the first time around,
9 especially somebody who's a small scale motor carrier
10 sole proprietor to not be aware of the regulations
11 and to not be in compliance.

12 Q. I think you mentioned several times the
13 FMCSA? Just for the record.

14 A. Federal Motor Carrier Safety
15 Administration.

16 Q. Thank you.

17 Is there anything else regarding your
18 compliance review that you've not yet mentioned today
19 that you think is important for the Commission to
20 know?

21 A. No. Just one thing that I would like to
22 state, that it's obvious that Mr. Diehl's a small
23 time in the big scheme of motor carriers. He employs
24 himself and his son. He operates out of his home.
25 He did not have an office or anything set up there.

1 He did not have a maintenance facility.
2 If it's bit cold and snowing, he's not doing -- he's
3 either not doing the maintenance on his truck or he
4 has to take it someplace else. Because he was doing
5 it in his driveway.

6 As far as the conditions during the
7 audit, you know, we're sitting at his kitchen table.
8 It's not the most professional setting by any means.
9 I'm not going to say it's the worst, but it wasn't a
10 good environment to actually conduct a compliance
11 review. But we got through it and obviously was not
12 very organized. And hopefully that's changed since
13 August of '08.

14 Q. '08 or '09, I'm sorry?

15 A. '09, yes, I'm sorry. Thank you. I
16 apologize.

17 MS. PARROT: Your Honor, I have no
18 further questions.

19 HEARING EXAMINER: Do you have any
20 questions?

21 MR. DIEHL: No, sir.

22 HEARING EXAMINER: No questions. You're
23 excused.

24 MS. PARROT: Your Honor, at this time the
25 staff would call Mr. Tom Forbes.

1 (Witness sworn.)

2 - - -

3 TOM FORBES

4 being first duly sworn, as prescribed by law, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 By Ms. Parrot:

8 Q. Good morning, Mr. Forbes. Would you
9 please state your full name for the record?

10 A. Tom Forbes, F-o-r-b-e-s.

11 Q. And your business address please?

12 A. 180 East Broad Street, Fourth Floor,
13 Columbus, Ohio 43215.

14 Q. By whom are you employed?

15 A. The Public Utilities Commission
16 Transportation Department, Compliance Division.

17 Q. What is your specific position within the
18 Compliance Division?

19 A. I'm a compliance officer.

20 Q. What are your duties and responsibilities
21 as a compliance officer?

22 A. I answer technical calls from the
23 regulated community, I review roadside inspections
24 and compliance reviews and assess forfeitures based
25 on the information provided in those documents.

1 I attend training, I testify at hearings,
2 and I conduct enough roadside inspections to maintain
3 my certifications.

4 Q. How long have you worked for the Public
5 Utilities Commission?

6 A. Five years.

7 Q. And how long have you been employed in
8 your current position?

9 A. Five years.

10 Q. Do you hold any certifications or have
11 you received any special training?

12 A. Yes, ma'am. I attended the North
13 American driver vehicle inspection report training to
14 inspect commercial motor vehicles, hazardous
15 materials inspections, cargo tank inspections, other
16 bulk package inspections, radioactive inspections and
17 compliance review.

18 Q. In the course of your job duties have you
19 had the opportunity to review the Compliance
20 Division's file on this particular case?

21 A. Yes, ma'am.

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

23 HEARING EXAMINER: You may.

24 Q. Mr. Forbes, I've handed you what's been
25 marked as Staff Exhibit 1. Do you recognize this

1 document?

2 A. Yes, ma'am.

3 Q. Please identify it for us.

4 A. This was a compliance review that was
5 conducted by Specialist Barrett on Lester R. Diehl,
6 operating as Ray's Trucking.

7 Q. Is this document part of the file that
8 you reviewed for this case?

9 A. Yes, ma'am.

10 Q. Is Staff Exhibit 1 a document that's
11 regularly maintained by the Compliance Division staff
12 in the course of its business?

13 A. Yes.

14 Q. Would you please tell us how the
15 compliance review report reaches the Public Utilities
16 Commission?

17 A. It is electronically transmitted by the
18 specialist to the Enforcement Division, a copy of it
19 is made and is hand-delivered to the Compliance
20 Division.

21 Q. And then what happens at that point once
22 it's received?

23 A. It is assigned to a compliance officer.
24 They enter the data in the computer based on what is
25 in the compliance review and then they fill out an

1 assessment worksheet and mail any letters of fines or
2 violations as are appropriate.

3 Q. You mentioned that they fill out an
4 assessment worksheet. Would you please tell us
5 generally how that process works?

6 A. Typically as a violation code cite, the
7 federal violation cite is listed in the assessment
8 worksheet. It is reviewed against the list in the
9 federal regulations to determine if it is a critical
10 or an acute violation. It may also be neither.

11 For critical and acute violations fines
12 are generated if they exceed -- if critical
13 violations exceed the 10 percent threshold. And all
14 that data is plugged into the assessment chart and
15 the dollar amount is determined for the appropriate
16 forfeiture.

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

18 HEARING EXAMINER: You may.

19 MS. PARROT: Your Honor, at this time I
20 ask that Staff Exhibit 2 be marked for identification
21 purposes.

22 HEARING EXAMINER: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Forbes, do you recognize what's been
25 marked as Staff Exhibit 2?

1 A. Yes, ma'am.

2 Q. What is this document please?

3 A. This is the assessment chart I was
4 referencing earlier on the case for Ray's Trucking
5 with the compliance review number CR09C344.

6 Q. So this is the assessment worksheet that
7 was completed for the compliance review done on Ray's
8 Trucking?

9 A. Yes, ma'am.

10 Q. And it looks like the assessment was done
11 on September 18, 2009; is that correct?

12 A. Yes.

13 Q. And appears that it was done by Christina
14 Ross who is the compliance officer.

15 A. Yes.

16 Q. So you yourself did not complete this
17 worksheet.

18 A. I did not.

19 Q. Did you have the opportunity though to go
20 through it and review it before your testimony today?

21 A. Yes, ma'am.

22 Q. Thank you.

23 And is this document regularly maintained
24 by the Compliance Division staff in the ordinary
25 course of business?

1 A. Yes.

2 Q. Let's go through the assessment for the
3 first violation in particular. I'm not sure that we
4 need to go through each one, but we'll start with the
5 first one and if you could please walk us through it.

6 A. The first violation is for 382.115(a).
7 That was the drug and alcohol program, failing to
8 have a drug and alcohol testing program. That is an
9 acute violation.

10 Acute violations have a base forfeiture
11 of \$1,000. And it goes down this table and it gets
12 to the number of violations down under "sum" and this
13 was one violation because it's a program violation
14 since missing the whole program, so 1 is multiplied
15 by 1,000 to come up with \$1,000 forfeiture.

16 Q. You mentioned that the amount of the
17 acute violation is \$1,000, and I see that it also
18 indicates a critical violation would be assessed the
19 amount of 400. How are those determined?

20 A. Those are determined by the Commission.
21 Those are the amounts for all compliance reviews.
22 Those are the base amounts for all compliance reviews
23 assessed by the Commission.

24 Q. And then it looks like you also consider
25 other factors, such as the extent of the violation,

1 culpability and so forth. Would you please expand on
2 that for us?

3 A. The extent of the violation for acute
4 violations is always 1. For critical violations if
5 there is less than 10 percent it would be a zero.
6 And it's a multiplication factor so that would mean
7 there would be no fine if it's less than 10 percent.

8 Culpability is -- there's standard
9 culpability and there is willful conduct where
10 somebody was trying to deceive or fraudulently hide a
11 document. None of these violations were for willful
12 conduct. These were all for standard actions.

13 As Mr. Barrett stated, there were no
14 previous compliance reviews so this carrier has no
15 history with the Public Utilities Commission
16 previously violating these same sections of rules.
17 So the standard history of 1 is used.

18 Then comes to the sum of violations, and
19 that is how many violations did Mr. Barrett discover
20 based on the number checked.

21 Q. And then the repeated violations portion
22 of the assessment, when is that relevant?

23 A. When there is more than one violation the
24 repeated violations are at 25 percent of the original
25 assessment. So for thousand dollar violations,

1 repeated violations would go for 250 and for \$400
2 violations, repeated violations would go at \$100.

3 There is a caveat to that that for 396
4 violations repeated violations are only \$25. But for
5 all other sections.

6 Q. And then finally the ability to pay
7 factor, how is that used?

8 A. It's based on the gross income that was
9 provided by the specialist and the PUCO caps their
10 forfeitures at 1 percent of the gross income per
11 violation.

12 Q. And then finally you reach a total for
13 that particular violation, that particular code
14 section then at the bottom of the assessment
15 worksheet it looks like.

16 A. Yes, ma'am.

17 Q. And so then would you take those totals
18 for each violation and add those together to reach a
19 grand total for the amount of the forfeiture?

20 A. Yes, ma'am.

21 Q. You mentioned you've had the chance to
22 review this worksheet. Are there any corrections or
23 additions that you need to make to it at this time?

24 A. Yes. I discovered two errors in the
25 worksheet when I was reviewing it. The first error

1 is for what's listed as violation No. 4 on page 1 of
2 the worksheet. It shows three violations discovered
3 of 33.

4 That does not meet the 10 percent
5 requirement, so the extent should have been listed as
6 a zero rather than a 1 and it would change that \$600
7 to zero dollars.

8 The second violation with an error is
9 violation No. 7. The 395.8(a) section and in the
10 math for repeated violations each repeated violation
11 should have been at \$100. 11 times 100 would have
12 been 1,100 and it's listed as 775. So that violation
13 would have been increased by \$325.

14 The first violation mentioned, violation
15 No. 4 would have been reduced by 600 showing a net
16 difference of \$275 that this case is overassessed.
17 It was originally assessed at \$7,025. Deducting the
18 \$275 it was overassessed, the correct forfeiture
19 would have been \$6,750.

20 Q. So is the new figure that you've just
21 mentioned, \$6,750, is that the grand total that
22 you -- of the forfeiture that you would recommend to
23 the Commission?

24 A. Yes, ma'am.

25 Q. Do you feel that that amount is a

1 reasonable recommendation to make to the Commission?

2 A. Yes, ma'am.

3 Q. Are the dollar amounts and the process
4 you've just described for us, is that consistent with
5 the federal government's uniform fine assessment
6 program?

7 A. We follow the same pattern of critical
8 and acute violations that they do. The dollar
9 amounts are less.

10 Q. So actually less harsh, is that what
11 you're saying?

12 A. Financially less harsh, yes.

13 Q. Than the federal program.

14 And is this process, is it used
15 consistently by the PUCO staff for compliance review
16 assessments that are done?

17 A. Yes.

18 Q. And I think you mentioned also that part
19 of your job is to issue notices to carriers about how
20 this process operates; is that correct?

21 A. Yes.

22 Q. Would you please tell us what the nature
23 of the notices that are sent; what's described to the
24 carrier?

25 A. For compliance review the carrier

1 receives what's called a notice of apparent violation
2 and intent to assess forfeiture. That's the first
3 document the carrier receives. It lists the
4 violations that are listed in either the compliance
5 review or the assessment chart and the monetary
6 amount the Commission is proposing to assess for that
7 violation.

8 With that document is an explanation
9 sheet to tell the carrier -- an instruction sheet to
10 tell the carrier how to pay the forfeiture or request
11 a telephone conference if they wish to provide
12 mitigating circumstances or corrective measures.

13 Q. Thank you.

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

15 HEARING EXAMINER: You may.

16 MS. PARROT: Your Honor, I would like to
17 mark Staff Exhibit No. 3 for identification purposes.

18 HEARING EXAMINER: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Mr. Forbes, do you recognize what's been
21 marked as Staff Exhibit No. 3?

22 A. Yes, ma'am.

23 Q. Could you please tell us what it is?

24 A. This is the notice of apparent violation
25 and intent to assess forfeiture I was previously

1 discussing as what was sent to the carrier.

2 Q. And is this an accurate representation of
3 the notice that was sent to Mr. Diehl?

4 A. Yes, ma'am.

5 Q. Once this notice is received what happens
6 at that point?

7 A. Mr. Diehl had the option to either pay
8 the forfeiture or request a telephone conference. In
9 this particular case Mr. Diehl requested a telephone
10 conference.

11 Q. And then what was the outcome of that
12 conference?

13 A. No settlement was reached or resolution
14 was reached at the telephone conference.

15 Q. And was any further notice then sent to
16 Mr. Diehl at that point?

17 A. Yes. Then Mr. Deal was sent what's
18 called a notice of preliminary determination. In
19 essence says we had a telephone conference and was
20 unable to resolve this case.

21 With it comes an instruction sheet that
22 either instructs Mr. Diehl how to pay the forfeiture
23 or request an administrative hearing and the
24 timelines to do such.

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

1 HEARING EXAMINER: You may.

2 MS. PARROT: Your Honor, at this time I
3 would like to mark Staff Exhibit 4.

4 HEARING EXAMINER: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Mr. Forbes, do you recognize Staff
7 Exhibit 4?

8 A. Yes, ma'am.

9 Q. Would you identify it for us please?

10 A. This is the notice of preliminary
11 determination that was provided to Mr. Diehl after
12 conclusion of the telephone conference.

13 Q. Is this Staff Exhibit 4, is it an
14 accurate representation of the letter of the notice
15 that was sent to Mr. Diehl?

16 A. Yes.

17 Q. Mr. Forbes, are Staff Exhibits 3 and 4
18 maintained by the Compliance Division staff in the
19 ordinary course of business?

20 A. Yes, ma'am.

21 MS. PARROT: Your Honor, I have no
22 further questions.

23 HEARING EXAMINER: Very well.

24 Mr. Diehl, do you have questions?

25 MR. DIEHL: No, sir.

1 HEARING EXAMINER: You're excused.

2 MS. PARROT: Your Honor, at this time I
3 would move for the admission of Staff Exhibits 1
4 through 4.

5 HEARING EXAMINER: I will admit those
6 exhibits into evidence at this time.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 MS. PARROT: The staff has no further
9 witnesses.

10 HEARING EXAMINER: Mr. Diehl, do you wish
11 to provide testimony?

12 MR. DIEHL: I don't know how to do it.
13 I'm just discussing the amount of fine, that's all
14 I'm really here for. I don't disagree with what
15 Mr. Barrett found.

16 HEARING EXAMINER: You need to state that
17 on the stand if you want to.

18 MR. DIEHL: Okay, not a problem.

19 (Witness sworn.)

20 HEARING EXAMINER: Please be seated.

21 - - -

22

23

24

25

1 LESTER R. DIEHL

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

4 DIRECT TESTIMONY

5 HEARING EXAMINER: You can go ahead and
6 provide your historical narrative of events.

7 THE WITNESS: I got notified by the
8 Commission that Mr. Barrett was going to come out and
9 give me an audit. I made one phone call to him so we
10 could roughly set up a time and he sent me a letter
11 out saying what he was going to need to go over so I
12 could help provide.

13 So when the day come, he showed up, I had
14 very little because I started this company as myself
15 and then I grew and got bigger and my son just
16 started driving for me. And I had no way of knowing
17 what all I needed because it -- as a small guy,
18 that's not published for me to just get ahold of.

19 And things he found wrong with me, I'm
20 human, I did make a mistake and not be able to do all
21 this. I feel the fine is just way out of hand. I
22 was brought up to use common sense and to me this
23 isn't common sense to fine somebody like me this kind
24 of money.

25 And I admit to making the mistakes. I

1 didn't have the proper knowledge. Like he said, I
2 operate out of my house. I drive all the time
3 because I drive one of the trucks. My son's gone all
4 the time. We do our own mechanic work. And some of
5 the violations nobody has discussed this till today
6 how we done anything.

7 Other than what Mr. Barrett found out
8 when he was out there, and of course he can only do
9 so much in his line of work. And I just feel like
10 other than tabling half this fine back for another
11 audit, I just feel the fine is just way too much for
12 a small person like me.

13 Because at this point if I got to pay
14 \$7,000, I'm going to have to sell trucks and do
15 something else. Because I can't afford \$7,000 fine
16 and still make my truck payments and try to survive.

17 Because I never considered myself an
18 employee, I just always drove the trucks. We paid
19 the bills out of what money come home. We needed
20 parts for the truck, we went down and paid it.

21 So as far as my drug and alcohol, I guess
22 since I don't consider myself an employee, because I
23 never dealt with employees before, I just never done
24 none of this stuff because when I looked into some of
25 it, at that time starting this the only program I

1 could get into was going to cost me like 5 or \$600
2 upfront to get a drug program.

3 Mr. Barrett did straighten me out on that
4 and we have started a drug program on both me and my
5 son driving records. He helped me get that
6 straightened out so we have started this stuff now.

7 At that point I didn't -- I couldn't find
8 no information out. What little bit I was home was
9 afterhours because I usually get up and leave at
10 2:00, 3:00 o'clock in the morning, don't get home
11 till 7:00 or 8:00 o'clock at night. There was nobody
12 I could call at them hours to find out all this
13 information what I did need to do.

14 My wife's gone, she baby-sits the
15 grandbabies at my daughter's house all the time so
16 she's not at home. You can call the house, all you
17 get is an answering machine all day long till I get
18 home to see what's on my answering machine.

19 So I'm just, I understand we need safety
20 and I'm for safety on the trucks. I'm not trying to
21 get out of that part of it. I just feel this needed
22 to be discussed a little more before they put this
23 kind of fine on me to see if I did understand why it
24 is and I just don't know how I'm going to pay it, to
25 be honest with you.

1 I know, and I've discussed some of it
2 with Mr. Barrett, there's a lot of carriers out there
3 around my area that to me are doing worse than this
4 running around with farm tags on doing commercial
5 work. They're getting away with it.

6 Now's telling me I can only operate 11
7 hours a day. When we haul grain in the fall we can
8 run up to 15 hours a days. Some places stay open for
9 us.

10 I'm going to have to cut my hours and
11 other places are going to come in and take my
12 business away and I don't feel that's right. Some
13 places we run whole mile radius. To make a complete
14 circle is only a mile. How do we log that when we're
15 on the road maybe three/quarters of a mile?

16 That's where my log violations come in
17 because I didn't know how to log that when I stayed
18 at home, then I got on the road out of state is when
19 they caught me with my log violations. So I paid my
20 log violations of \$200 to that state and now they're
21 fining me here another \$100 for something that I
22 already paid.

23 But that's all coming out of my pocket
24 since I'm not a corporation. I feel like the log
25 violation not being fined three times now for the

1 very same thing. I just don't -- I made a mistake
2 and I'm not trying to deny that, I just don't feel
3 the way the fine was set up is right.

4 I don't know how else to explain it so
5 everybody can understand what I'm saying. But that's
6 my -- I'm not, like I said, I'm not discussing what
7 he found wrong is wrong. It was wrong. I wasn't
8 right. I'm -- I guess what I'm saying, protesting
9 the fine that's involved in it. The money factor on
10 it.

11 HEARING EXAMINER: Does that conclude
12 your testimony?

13 THE WITNESS: I guess the best I can do,
14 yes.

15 HEARING EXAMINER: Do you have any
16 questions?

17 MS. PARROT: Just a couple, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Parrot:

21 Q. Good morning, Mr. Diehl. Do you have a
22 copy of what's been marked as Staff Exhibit 1 in
23 front of you?

24 A. I think right here's one of them.

25 Q. That's Investigator Barrett's compliance

1 review report that he completed.

2 So I just want to be sure I understand
3 your testimony. You're not disputing his findings
4 that are summarized in this document.

5 A. Right. That's what the law states. I
6 understand that now.

7 Q. On the first page of this report it
8 indicates that for the year 2008 I believe that the
9 gross revenue for your company was approximately
10 \$195,000; is that correct?

11 A. Yeah. Of the paperwork that I showed
12 him.

13 Q. And it looks like your company has been
14 issued both the USDOT number as well as an MCMX
15 number; is that correct?

16 A. Yes, ma'am.

17 Q. At the point that you obtained those
18 numbers did you do any -- take any efforts to
19 familiarize yourself with the Federal Motor Carrier
20 safety regulations?

21 A. No. With the DOT number what caused me
22 to get it, I was running out of Indiana hauling grain
23 and had to have a DOT number on the side of the
24 truck. The State of Ohio itself doesn't of course
25 ask if you're a farmer, commercialized hauler or

1 what, every truck out there will be a DOT number.

2 The officer stopped me to give me an
3 indication what I needed. So I went home, we printed
4 it off, we filled it out and sent it in. However
5 long it takes to give me the DOT number.

6 And on the general freight, you know,
7 they told me how to fill out for the MC number so I
8 basically just filled it all out and it was all sent
9 back to me. They didn't question me, I didn't
10 question them, if you understand what I'm trying to
11 say --

12 Q. Okay.

13 A. -- on that.

14 Q. So when you started your business, when
15 you began your own business did you at that time take
16 any steps to try to familiarize yourself with the
17 regulations and what's required to operate a business
18 like this in Ohio?

19 A. Only thing I done, of course, I've been
20 driving for 36 years and when I first started I
21 leased my truck to carriers. And I just picked up
22 over all them years of what I thought we were doing
23 things right. Which probably was a bad thing to do
24 at this point.

25 And I just done it from there and

1 everybody I talked to since deregulation come in
2 effect they said get your own numbers. Go out and
3 get your own business. You have to go through this
4 company, you don't have to go through this company,
5 and give them 25 to 30 percent of the total revenue.

6 I've always hauled grain. So they --
7 basically that's all I did. When I was with the
8 carriers, they said something about drug testing, but
9 when I got my own authority, well, I ain't
10 considering myself an employee, we're just driving
11 the trucks.

12 Like I say, it pays the electric bill,
13 everything at home, brings groceries home. I never
14 paid myself at the end of the week \$300 or whatever
15 the case may be. As long as the money was in the
16 checkbook whatever we needed, we just went out and
17 got.

18 Q. So when you were working for these other
19 carriers you were aware that there were things such
20 as drug and alcohol testing programs?

21 A. Yeah. That was just going into effect as
22 I was starting to quit those.

23 Q. And as a driver did you have to maintain
24 a logbook or some sort of record of your hours.

25 A. See, when I haul grain being I stayed in

1 Ohio or under a hundred air miles, they never said
2 anything about keeping track of your time either. So
3 I didn't have to log it under a hundred air miles.
4 So I never did that.

5 When I was going through the road I just
6 showed off duty seven days prior to that. So when I
7 come my own company, I just didn't show running my
8 grain and then when I get my loads of freight going
9 to these other states, I just picked the logbook
10 number that day.

11 So when I got stopped on them two
12 occasions what did you do prior to this? I just
13 hauled grain locally. Most of mine's under a hundred
14 miles grain hauling. So that's where we need to know
15 what you done the last seven days. Say you hauled
16 grain.

17 I understand guys will turn the truth and
18 try to benefit themselves. But I always tried to be
19 honest when I got stopped by any officer what
20 happened prior to that. Of course I was wrong. I
21 got fined for it, so.

22 Q. Were you required to keep a medical
23 certificate that was up to date --

24 A. Yes.

25 Q. -- as a driver with these other carriers?

1 A. One here where I -- my son got caught, he
2 was hauling grain locally. There again, I assumed he
3 was doing that part for me instead of me having to
4 question him on it and that's where I was wrong.

5 I should have been questioning him
6 because he was also working at a regular garage at
7 the time. When he started with me he only worked
8 part time four hours in the morning. Then he got
9 laid off here two years ago and decided he'd go full
10 time. And they made him take physicals at work so I
11 just assumed he had an up-to-date one. Like I say,
12 my fault. I should have checked better than that.

13 Q. And then finally the vehicle inspection
14 reports, is that something you were required to do
15 when you were working for other carriers prior to --

16 A. My own truck, most carriers left that
17 responsibility up to me because it's my truck to be
18 kept care of. Until he explained to me. When we --
19 me and my son find something wrong with it, we just
20 run down and buy the part and put it on. Because we
21 do all our own work. I go home today and find
22 something wrong, we'll buy the part, so when the
23 truck comes in, we put it on.

24 I got a book that we keep for the trucks
25 and when we do the repairs, but not how we found the

1 repairs. Everything that's listed per truck there's
2 a book in each one of the trucks when we do we write
3 the date, what we done, and the miles down as far as
4 when the repair was done. Not how we found it.

5 Because we just see it, broken spring, we
6 need a spring on the truck. So we just back it in
7 the drive and replace the spring, you know.

8 Q. So have you taken steps after this
9 compliance review --

10 A. We show it on the log like Mr. Barrett
11 told us to do. We still don't always when we find
12 the problem down, haven't got myself still in the
13 routine make that form, "broken spring, truck out of
14 commission." We just run down, buy the spring,
15 couple hours the truck is back on the road because we
16 fixed the spring.

17 Q. And in terms of hours of service, have
18 you made any changes with respect to that?

19 A. We've got -- I've got them -- now we've
20 got logs for every day since Mr. Barrett's been out
21 at the house. And he explained to me as far as my
22 grain we just need to show on the logbook say we
23 worked eight hours today.

24 Instead of running 40 miles, you have
25 more lines where you load and unload that nobody

1 would be able to load. We just show eight hours
2 hauling grain locally, we put in remarks and start of
3 each day we show what we done the pre-trip inspection
4 on the logbook.

5 And then however long we did and back
6 home at DeGraff, Ohio and started the next day
7 whatever time. It varies day to day.

8 Q. Is your company participating in a drug
9 and alcohol testing program?

10 A. Yes. He got me set up over at Wilson. I
11 called the lady and we went over there. Of course,
12 my physical right here a few months ago, I went and
13 got a new physical at the hospital. Got all that
14 because we started -- with his help we started a
15 driver's file like we needed to be.

16 Q. So you're not disputing any of the
17 violations that Investigator Barrett found, it's just
18 the amount of the forfeiture that's been recommended
19 to the Commission.

20 A. Right.

21 Q. And are you disputing the process that
22 was used now that you've kind of heard about how that
23 works or is it just the total amount?

24 A. Just the total amount to me just seems to
25 be a little bit high for being my first time even

1 being audited, let alone being fined.

2 I mean I feel like first time you get a
3 speeding ticket you go to court and the judge stands
4 up and say if you behave, we'll reduce it down half
5 of what it could be and you pay it. But they don't
6 say we're going to carry this other \$35 over from a
7 year from now and see if you get caught or not and
8 get added to it.

9 I hope I'm explaining it so you can
10 understand.

11 Q. So the staff has recommended a forfeiture
12 and I think they revised it today, the recommendation
13 was a little lower. I believe it's roughly \$6,700.
14 So you still feel that that amount is unreasonable?

15 A. I still feel it's high due to the fact,
16 like I say, in my logbook violations I already had to
17 pay the state I got stopped in. Now I got to pay the
18 State of Ohio and the feds some more. And when I
19 paid the state I realized the mistake.

20 Like I say, the only reason they caught
21 me, I had been hauling grain prior to that time
22 locally at home and then I left out the dog food and
23 one was state of Wisconsin and one was state of
24 Kentucky they caught me in because I didn't have
25 enough prior seven days knowing what I was doing so

1 they wrote it up being over hours.

2 MS. PARROT: Your Honor, I have no
3 further questions.

4 HEARING EXAMINER: Very good.

5 Do you have anything more to add?

6 THE WITNESS: No, sir. Best I can do.

7 HEARING EXAMINER: You're excused.

8 THE WITNESS: Thank you.

9 HEARING EXAMINER: Anything more to bring
10 before the Commission?

11 Then I consider this matter submitted on
12 the record. Thank you for coming.

13 MS. PARROT: Thank you.

14 (Hearing adjourned at 11:20 a.m.)

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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 Tuesday, April 20, 2010, and carefully compared with my original stenographic notes.

Julieanna Hennebert, Registered
Professional Reporter and RMR and
Notary Public in and for the
State of Ohio.

My commission expires February 19, 2013.

(JUL-1547)

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Summary: Transcript Transcript of Lester R. Diehl hearing held on 04/20/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Hennebert, Julieanna Mrs.