

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Robert :
Williams, Notice of :
Apparent Violation and : Case No. 10-235-TR-CVF
Intent to Assess :
Forfeiture. :

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PROCEEDINGS

before Mr. Scott E. Farkas, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 10 a.m.
on Thursday, August 19, 2010.

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On behalf of the Staff of the PUCO.

Mr. Stephen A. Moyer
9 East Kossuth Street
Columbus, Ohio 43206

On behalf of Respondent Robert Williams.

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17
18
19
20
21
22
23
24
25

INDEX

- - -

Witness	Page
Phillip Haskins	
Direct Examination by Mr. Margard	7
Cross-Examination by Mr. Moyer	27
Examination by The Examiner	41
John Canty	
Direct Examination by Mr. Margard	43
Cross-Examination by Mr. Moyer	58
Robert Williams	
Direct Examination by Mr. Moyer	60
Cross-Examination by Mr. Margard	67
Courtney Webb	
Direct Examination by Mr. Moyer	74

- - -

Staff Exhibit	Identified	Admitted
1 Driver/Vehicle Examination Report	10	59
2 Photos of the railroad crossing from the PUCO website	22	--
3 Forfeiture Assessment	46	59
4 Civil Forfeiture Violations Chart Nature & Gravity Points	48	59
5 Notice of Apparent Violation and Intent to Assess Forfeiture	56	59

- - -

Respondent Exhibit	Identified	Admitted
A Multimodal Dangerous Goods Form	34	86
B Crown Dock Receipt	34	86
C Investigation Summary	39	--

INDEX (Continued)

- - -

Respondent Exhibit	Identified	Admitted
D Placards General Requirements	75	86
E Specification-Based Packaging Rules 172.504(c)(1)	39	86
F Material Safety Data Sheet	80	--

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1 Thursday Morning Session,
2 August 19, 2010.

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4 THE EXAMINER: This is the -- the
5 Commission has called for hearing at this time and
6 place the Matter of Robert Williams, Notice of
7 Apparent Violation and Intent to Assess Forfeiture,
8 Case No. 10-293-TR-CVF.

9 My name is Scott Farkas. I am the
10 Attorney Examiner assigned to hear this case. At
11 this time I'll take appearances. First, on behalf of
12 the Staff.

13 MR. MARGARD: Thank you, your Honor. On
14 behalf of the Staff of the Public Utilities
15 Commission, entering the appearance of Richard
16 Cordray, Ohio Attorney General, by and through
17 Assistant Attorneys General Werner L. Margard and
18 Sarah J. Parrot, 180 East Broad Street, 6th Floor,
19 Columbus, Ohio.

20 THE EXAMINER: On behalf of Mr. Williams.

21 MR. MOYER: Yes, your Honor. On behalf
22 of Robert Williams, Steve Moyer, 9 East Kossuth
23 Street, Columbus, Ohio 43206, Supreme Court No.
24 0025211.

25 THE EXAMINER: Thank you. At this time

1 is there anything that the parties want to raise as
2 an issue at all?

3 MR. MOYER: Yes, your Honor, on behalf of
4 the Respondent just as a technical matter pursuant to
5 Ohio Administrative Code 409 -- excuse me,
6 4901:2-7-19 requiring that the evidentiary hearing be
7 scheduled or held within 60 days, that has not
8 occurred.

9 THE EXAMINER: Well, the rule is it shall
10 be scheduled within 60 days of the prehearing being
11 held.

12 MR. MOYER: Okay.

13 THE EXAMINER: And I believe it was
14 scheduled within 60 days of the prehearing.

15 MR. MOYER: Just making it for the
16 record, your Honor.

17 THE EXAMINER: Okay.

18 MR. MOYER: Thank you.

19 THE EXAMINER: I believe just for the
20 record the prehearing was scheduled, let's see --
21 Mr. Williams filed his request on February 25, 2010.
22 An entry scheduling a prehearing settlement
23 conference was issued on March 18. That would fall
24 within the rule of scheduling a prehearing conference
25 within 30 days of the request for a hearing. And I

1 believe the initial entry scheduling the hearing was
2 issued on June 11. I believe that falls within the
3 goal also.

4 I'm sorry. I think the first one
5 scheduling the hearing was on April 26. It was
6 continued by both parties, both parties. Staff
7 initially requested a hearing continuance and then,
8 Mr. Moyer, you requested a continuance so.

9 MR. MOYER: Thank you, your Honor.

10 THE EXAMINER: Okay. Any other matters?

11 MR. MARGARD: No, your Honor.

12 THE EXAMINER: So, Staff, you may call
13 your first witness.

14 MR. MARGARD: Thank you, your Honor. I
15 would call Officer Phil Haskins to the stand, please.

16 THE EXAMINER: Okay.

17 - - -

18 PHILLIP HASKINS

19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Margard:

23 Q. Please state your name for the record.

24 A. Phillip Haskins.

25 Q. And what is your business address,

1 Mr. Haskins?

2 A. My business address is 180 East Broad
3 Street, Columbus, Ohio 43215, Transportation
4 Department, Public Utilities Commission of Ohio.

5 Q. And you are employed by the Commission;
6 is that correct?

7 A. Yes.

8 Q. And what is your job title and what are
9 your duties and responsibilities?

10 A. My job title is Hazardous Materials
11 Investigative Specialist. My duties include the
12 inspection of vehicles and motor carriers
13 transporting hazardous materials for compliance with
14 the federal and state safety regulations,
15 transportation volumes of hazardous materials and
16 regulations.

17 Q. And how long have you performed that job?

18 A. 23 years.

19 Q. And do you have any certifications or
20 special training of any sort?

21 A. Yes. There's extensive training required
22 and ongoing training through certification annually
23 that the federal government requires us to meet to
24 perform these jobs.

25 Q. And are all of your certifications

1 current?

2 A. Yes.

3 Q. Mr. Haskins, were you on duty on
4 October 22 of 2009?

5 A. I was.

6 Q. And do you recall what your job
7 assignment was on that date?

8 A. I recall working in a specific area of
9 the state. I cover approximately 25 counties, and
10 the county I was working in was Union County that
11 day.

12 Q. Do you recall inspecting a vehicle on
13 that date that resulted in your preparation of an
14 inspection report, specifically report No.
15 0H3202304873?

16 A. Yes.

17 Q. And as you testify today, do you have an
18 independent recollection of that inspection?

19 A. I do.

20 MR. MARGARD: May I approach, your Honor?

21 THE EXAMINER: Yes.

22 MR. MOYER: Your Honor, might I object to
23 the presentation of the document to the witness when
24 he indicated he had an independent recollection of
25 the stop? There has been no indication he needs a

1 document to refresh his recollection.

2 THE EXAMINER: Well, you can certainly
3 raise an objection. I think at this point he's just
4 asking him to identify -- he has just presented
5 him -- actually he hasn't -- he's just taken the
6 exhibit and presented me a copy of it.

7 MR. MARGARD: Your Honor, if I am
8 permitted to proceed, I will ask Officer Haskins to
9 identify the document.

10 THE EXAMINER: I think that would be
11 okay. I am going to overrule your objection.

12 MR. MARGARD: Thank you.

13 Q. Mr. Haskins, I've handed you a document
14 that I have marked for purposes of identification as
15 Staff Exhibit No. 1, a multi-page stapled document.
16 Can you identify that for us, please?

17 A. Yes. This is a photocopy of an
18 inspection report that I completed on October 22,
19 2009.

20 Q. And this report was prepared by you; is
21 that correct?

22 A. It was.

23 Q. And can you please tell us how this, the
24 report, was prepared?

25 A. This report is prepared from a notebook

1 computer that I am issued by the State of Ohio to
2 conduct my job duties, and it generates a document
3 that once completed I provide this inspection report
4 to the driver.

5 Q. This is part of the regular course of
6 your duties?

7 A. It is.

8 Q. And this is done at the time of your
9 inspection; is that correct?

10 A. At the completion of the inspection.

11 Q. Mr. Haskins, I want to ask you some
12 questions about this document. First of all, can you
13 tell me what time this inspection occurred?

14 A. I began the inspection at 11:35 in the
15 morning and completed the inspection at 10 minutes
16 after 12.

17 Q. And that appears at the very top of this
18 document; is that correct?

19 A. It does.

20 Q. There's also a notation there of a
21 certification date that is different than the
22 inspection date. Do you know what that refers to?

23 A. That's the date it was uploaded into the
24 federal system.

25 Q. And do you know how that process occurs?

1 A. It's done electronically through the
2 Safety Net system.

3 Q. And are you responsible for performing
4 that function?

5 A. No, sir.

6 Q. Below the time of the inspection there is
7 a notation of Inspection Level: 1 - Full Inspection.
8 What's a full inspection entail?

9 A. A full inspection involves a complete
10 inspection of the commercial vehicle including the
11 inspection of the under-components of the vehicle
12 including brake inspections.

13 Q. And that's the level of inspection that
14 you performed on this vehicle on this date?

15 A. That's correct.

16 Q. Below that there is an HM Inspection
17 Type. HM refer to HazMat; is that correct?

18 A. It does. It's the kind of hazardous
19 materials. It indicates they were non-bulk products
20 being shipped.

21 Q. What does a non-bulk inspection type
22 involve?

23 A. It involves the type of imaging that the
24 hazardous materials was packaged in at this time.

25 Q. So it doesn't refer to a specific type of

1 inspection; it refers to the materials that were
2 inspected.

3 A. That's correct, packaging.

4 Q. Thank you. Now, you indicated that you
5 use a computer to perform your inspection --

6 A. Yes.

7 Q. -- and the report that you print out, and
8 you are able to print a copy of the report at the
9 time of the inspection, correct?

10 A. Yes.

11 Q. Does it look like this?

12 A. It resembles this. It's a reflection of
13 the -- all of the relevant information of the report
14 that I complete upon the inspection, but it is a copy
15 of the documents and the information that I've
16 documented.

17 Q. But as I understand it then, this is not
18 an exact copy of the document you would have provided
19 to the driver on that date; is that correct?

20 A. That's correct.

21 Q. But is the information contained in this
22 report the same as the information you would have
23 provided to the driver at that time?

24 A. Yes.

25 Q. And was it accurate at the time that you

1 put the information into your computer?

2 A. Yes.

3 Q. Tell us what you do with that information
4 once you've inputted all the data into the computer.

5 A. It's -- it's a Windows-based program that
6 requires me to complete all of the necessary and
7 required biographical information. Once the
8 inspection report is completed I print a copy of that
9 inspection document and present it to the driver for
10 signature.

11 Q. And the driver would have signed the
12 document; is that correct?

13 A. Yes.

14 Q. Are there occasions when drivers decline
15 to sign the document?

16 A. Yes, there are.

17 Q. In your recollection did Mr. Williams
18 sign the document?

19 A. I believe he did, yes.

20 Q. Now, there are some -- some handwritten
21 markings on this document. Are these your
22 handwritten markings?

23 A. No.

24 Q. Do you have any knowledge as to what they
25 signify?

1 A. No, sir.

2 Q. The rest of the information contained in
3 this document is information that you created; is
4 that correct?

5 A. Yes.

6 Q. Okay. Let me ask you to take a look at
7 the section that talks about the location. This is a
8 roadside inspection. What does that mean?

9 A. That means it was conducted alongside a
10 public highway.

11 Q. And this particular highway was U.S.
12 Route 42 in Union County?

13 A. Correct.

14 Q. Do you know in which direction the driver
15 was headed?

16 A. Yes.

17 Q. And what direction was he headed, please?

18 A. South.

19 Q. And do you know what -- his destination
20 here is indicated as Columbus?

21 A. Yes. That was obtained from the shipping
22 document that the driver presented me. The
23 origination and destination was information that I
24 derived from the driver's shipping documents.

25 Q. Below that is a section marked vehicle

1 identification. Can you briefly describe what's
2 contained in the columns in this section, please?

3 A. The column under vehicle identification
4 identifies the commercial vehicle, both power unit
5 and trailer in this case, the type, year of
6 manufacture, biographical information of the vehicle,
7 and VIN number of both the tractor and the trailer
8 that the driver was operating at the time I inspected
9 it.

10 Q. There's a column that says GVWR. What
11 does that indicate?

12 A. That's the gross vehicle weight rating.

13 Q. Now, there are zeros indicated here.

14 A. That is normally determined to identify
15 whether jurisdiction applies under the federal code.
16 In this case it was a commercial vehicle tractor and
17 trailer with an 80,000-pound gross vehicle weight
18 rating and that field doesn't populate.

19 Q. Very good. There is also an OOS Stkr.
20 number.

21 A. Yes.

22 Q. What does that refer to?

23 A. That identifies the fact that there were
24 defects on the vehicle identified that would require
25 to be repaired and is considered to be out of

1 service.

2 Q. Thank you. Let me ask you to direct your
3 attention to the brake adjustments section.

4 A. Okay.

5 Q. You did inspect the brakes on this
6 vehicle; is that correct?

7 A. I did.

8 Q. And do you know how many -- apparently
9 there are five axles; is that correct?

10 A. Yes.

11 Q. And do I read this correctly to indicate
12 that the fifth brakes on the fifth axle were
13 inoperable?

14 A. Yes. Both left and right brakes on the
15 rear most axle that would be on the semitrailer were
16 inoperative.

17 Q. And if we look at the violations section
18 below that, that is the reason why this vehicle was
19 placed out of service; is that correct?

20 A. That's correct.

21 Q. Now, in the course of your inspection did
22 you cite the driver with any violation?

23 A. The only violation that I identified with
24 the driver was the fact that while transporting a
25 hazardous load he failed to stop at the railroad

1 grade crossing in --

2 Q. That's -- continue.

3 A. Indicated with the letter D under unit.
4 D stands for driver.

5 Q. Very good. This is not an out of service
6 violation in and of itself?

7 A. No, sir.

8 Q. What does the LVL 6 indicate?

9 A. Level 6, that's another type of
10 inspection that identifies a radioactive commodity.
11 In this case there were no radioactive vehicles.

12 Q. Okay. There is a column that says
13 verify. What is this column for?

14 A. That is a column where if a driver
15 corrects a defect during the course of inspection,
16 the verification would have been done in my presence,
17 that the defect would have been repaired. In this
18 case U stands for unknown.

19 Q. Thank you. The violation description, is
20 that something that you put in yourself or is that
21 automatically generated?

22 A. That's automatically generated by types
23 of violations of the Federal Safety Code already
24 present in the Windows-based inspection program.

25 Q. The next section says HazMat.

1 A. Yes.

2 Q. And is this information that you input as
3 well?

4 A. Yes.

5 Q. And what does this mean generally for the
6 sake of the record, a corrosive material?

7 A. That means at this time the vehicle was
8 transporting a hazardous material as a class 8
9 hazardous material which is a corrosive material.

10 Q. And this was placarded as hazardous
11 material load?

12 A. It was.

13 Q. Properly so?

14 A. Yes.

15 Q. Mr. Haskins, can you describe for us what
16 you recall about this inspection and why you stopped
17 this vehicle?

18 A. At this time I was traveling south on
19 U.S. Route 42 approximately three vehicles behind the
20 commercial vehicle in my state vehicle, an SUV, and
21 as I watched the commercial vehicle approach the
22 grade crossing, I did not see him stop as required as
23 he approached the grade crossing. I then followed
24 the vehicle to where I was in position to stop the
25 vehicle and affect an inspection which I did.

1 Q. Did you see the vehicle stop at all?

2 A. Did not.

3 Q. Did you see the vehicle slow at all?

4 A. I saw traffic as it approaches the grade
5 crossing, the vehicles in front of me slow, but not
6 to where I remember observing any stopping or brake
7 lights.

8 Q. You don't recall any brake lights at all
9 on this vehicle?

10 A. No.

11 Q. Did you inspect the brake lights?

12 A. Yes.

13 Q. Were the brake lights functioning?

14 A. Yes.

15 Q. In your inspection notes there is a
16 reference that the driver stated he was not paying
17 attention and forgot about the tracks. Did you have
18 a conversation with Mr. Williams?

19 A. Yes. Upon inspection I identified myself
20 to the driver and my intentions of inspecting the
21 vehicle and I inquired as to why he failed to stop at
22 the grade crossing and his comment to me was stated
23 in the record in my inspection notes that he stated
24 he was not paying attention and forgot about the
25 tracks.

1 MR. MARGARD: Your Honor.

2 THE EXAMINER: Yes.

3 MR. MARGARD: I would respectfully
4 request the Bench take administrative notice of the
5 Public Utilities Commission database regarding
6 railroad crossing in the state of Ohio and
7 specifically the database with respect to grade
8 crossings maintained in conjunction with the Ohio
9 Rail Development Commission, and I have a document
10 that I would like to show to the witness from that
11 database with respect to this particular crossing.

12 THE EXAMINER: Do you have any response
13 to his request?

14 MR. MOYER: I haven't seen the document,
15 what we are talking about so.

16 THE EXAMINER: Can you explain for the
17 record what the database you are referring to is?

18 MR. MARGARD: Absolutely, your Honor.
19 The Public Utilities Commission does have
20 jurisdiction over railroad crossings, maintains a
21 database that includes photographs of all of the
22 crossings, detailed information about the site, the
23 owner of the rail, various location warning devices,
24 grade, traffic information, and so forth. This is
25 maintained for purposes of the Commission's ongoing

1 jurisdiction over those crossings.

2 THE EXAMINER: And it's maintained by the
3 Commission?

4 MR. MARGARD: It is, your Honor.

5 THE EXAMINER: I'll grant your request to
6 take administrative notice.

7 MR. MARGARD: Thank you, your Honor.
8 Your Honor, I had not premarked this as an exhibit
9 having requested administrative notice but for
10 convenience of the record it would be helpful to
11 denominate this as Staff Exhibit No. 2.

12 THE EXAMINER: Okay. So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Haskins, are you familiar with the
15 Commission's database with respect to railroad
16 crossings?

17 A. Yes.

18 Q. I've handed you a multi-page document
19 that's been marked for purposes of identification as
20 Staff Exhibit No. 2. Have you seen this document
21 before?

22 A. No.

23 Q. Have you seen this information before?

24 A. Yes.

25 Q. Does this information depict the crossing

1 that was the site of the violation in this case?

2 A. It does.

3 Q. And just so that I'm clear the direction
4 of Route 42 at that location is a northeast to
5 southwest direction; is that correct?

6 A. That is correct.

7 Q. And so the direction that you indicated
8 as south in your testimony would be the direction
9 depicted as west in the photograph; is that correct?

10 A. That's true.

11 Q. Does this accurately depict the scene of
12 the crossing?

13 A. Yes.

14 Q. Is there a -- a particular grade of note
15 with respect to this crossing?

16 A. Yes, yes, there is. There is a slight
17 grade as the U.S. 42 travels into that westerly
18 direction. As it approaches the crossing, it does
19 have a slight increase from being in a lower
20 elevation as it approaches the crossing.

21 Q. You would have been going slightly uphill
22 then at the time?

23 A. That's correct.

24 Q. You indicated there were a couple of
25 vehicles in front of you; is that correct?

1 A. Yes. There were some non-commercial
2 passenger-type vehicles between myself and the
3 commercial vehicle.

4 Q. Did you have a clear view of the
5 commercial vehicle?

6 A. Yes.

7 Q. Were there any other obstructions?

8 A. No, none, none that I recollect.

9 Q. Was there any other reason why your
10 visibility would have been impaired that day?

11 A. No.

12 Q. Mr. Haskins, let me ask you to take a
13 look at the area on Staff Exhibit No. 1 denominated
14 locally defined fields. Do you see that area?

15 A. Yes.

16 Q. And the first line indicates by whom the
17 shipment was loaded and this indicates it was loaded
18 by the shipper, not the carrier, correct?

19 A. That's correct.

20 Q. And that the shipping documents were
21 prepared by the shipper, not the carrier, correct?

22 A. Also correct.

23 Q. Then there is the hazardous class and 8
24 and that's the hazardous class materials previously
25 identified; is that correct?

1 A. That's the United States Department of
2 Transportation classification for a corrosive
3 material, class 8.

4 Q. Thank you. There is to the right an ID
5 number. Do you know what that ID number refers to?

6 A. Yes. The hazardous materials being
7 transported in this case was a corrosive with UN,
8 uniform identification, number as UN2794. All
9 hazardous materials have a UN identification number.

10 Q. So this would specifically identify the
11 materials involved?

12 A. Correct.

13 Q. Do you recall what those materials were?

14 A. Battery acid.

15 Q. The hazardous materials were otherwise
16 properly stored and loaded?

17 A. Yes.

18 Q. Thank you. The next line down indicates
19 a packaging group and has a Roman Numeral III. Is
20 that a Roman Numeral III?

21 A. It is.

22 Q. And what does that refer to?

23 A. There are three classifications of the
24 packaging for hazardous materials in the United
25 States Code and a packing group III designates a mild

1 hazard packaging. It's the least severe as far as
2 packaging of hazardous materials.

3 Q. Thank you. To the right there's an
4 indication of gross weight.

5 A. Yes.

6 Q. And is this pounds?

7 A. Yes.

8 Q. 2,330 pounds?

9 A. Yes.

10 Q. And to what portion of the load does that
11 weight refer?

12 A. That refers to the hazardous materials
13 declaration on the shipping document that the driver
14 presented me showing that there were 2,330 pounds of
15 corrosive material in that shipment.

16 Q. Did you visually inspect the load to
17 ensure that it was as indicated on the shipping
18 papers?

19 A. Yes.

20 Q. Is there any other information that you
21 recall about this inspection that is not contained in
22 your report?

23 A. No. I believe this contains all of my --
24 all of the facts I obtained from the inspection and
25 including my notes that I prepare after the

1 inspection that was a part of this interaction that I
2 had that day.

3 Q. Do you recognize the driver? Is he
4 sitting in the room?

5 A. Yes, he is.

6 MR. MARGARD: Thank you, your Honor. I
7 have no further questions for Officer Haskins.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Moyer:

11 Q. Good morning, Officer Haskins. My name
12 is Steve Moyer, and I represent Mr. Williams in this
13 case. How are you this morning?

14 A. Good, thank you.

15 Q. Fine. You indicated that you were three
16 vehicles back from Mr. Williams' semi tractor and
17 trailer, correct?

18 A. Yes. I believe two to three vehicles
19 separated us.

20 Q. Okay. And vehicles, the whole line of
21 vehicles slowed down for the crossing, correct?

22 A. Yes.

23 Q. And is it your testimony that through
24 those two or three vehicles you could see the brake
25 lights on that semitrailer at all times?

1 A. I operate an SUV, so I am somewhat
2 elevated from the other vehicles. And I believe I
3 testified that I don't recall seeing stop lamps as he
4 approached the crossing.

5 Q. Okay. Did you see -- could you see the
6 taillights -- my question is could you see the
7 taillights or could you not see -- could you see the
8 taillights? Let me ask you that.

9 A. I believe I could see them from -- from
10 independent memory of the --

11 Q. Are you certain as you sit here that you
12 could see his taillights the entire time as he
13 approached it?

14 A. I couldn't see any taillights activated
15 as I approached the crossing.

16 Q. That's not my question. Could you see
17 the taillights on the trailer the entire time?

18 A. From my position, yes, I believe I could
19 see the taillights.

20 Q. So there is no SUVs behind you or in
21 front of you?

22 A. No. They were passenger vehicles.

23 Q. They were passenger vehicles and none of
24 those passenger vehicles' hoods or roofs obscured the
25 view of the taillights of the semi tractor-trailer?

1 A. I don't believe so.

2 Q. You don't believe so, okay. And although
3 the vehicles slowed down and you're two or three cars
4 back, your testimony is that the truck did not come
5 to a stop?

6 A. That's correct.

7 Q. Okay. And that's based upon the fact you
8 couldn't see stop lights, correct?

9 A. I saw the whole line of traffic as it
10 approached the intersection, and none of the vehicles
11 stopped.

12 Q. Okay. But you're following a vehicle two
13 or three back so whether that one stopped doesn't
14 necessarily determine whether the semi tractor
15 stopped, correct?

16 A. Correct, but the relationship between the
17 commercial vehicle and all passenger vehicles did not
18 change through the intersection.

19 Q. Okay. And after you followed the
20 commercial vehicle over the tracks, you signaled,
21 flashed your lights at him to pull over, correct?

22 A. It was approximately 3 miles where I
23 could get in the position to stop the vehicle. The
24 other passenger vehicles either turned off or got
25 into a different lane, and when the vehicle was

1 directly -- immediately in front of me, I activated
2 my lights to inspect the vehicle.

3 Q. Okay. You flashed your headlights at
4 him?

5 A. My headlights were flashed and my lights
6 on top of my vehicle.

7 Q. And he immediately pulled over, correct?

8 A. Correct.

9 Q. Okay. And did you then -- did he advise
10 you that it wasn't safe there and you should go --
11 and you guys went to the bowling alley to perform the
12 inspection?

13 A. Yes.

14 Q. Okay. And at the time that you pulled in
15 behind him at the bowling alley, you made mention to
16 him about whether he stopped for the railroad tracks;
17 is that your testimony?

18 A. My testimony says during the initial
19 interaction with the driver I identified myself and
20 my purpose and I asked him about the railroad grade
21 crossings and the requirements for transporting
22 hazardous materials, and his comment to me was what I
23 documented in the notes of my inspection report.

24 Q. Okay. And did you tell him at that time
25 that you weren't going to write him up for the

1 railroad violation?

2 A. I didn't say that.

3 Q. Okay. Now, you indicated that you did a
4 brake inspection and that axle five was inoperable,
5 correct?

6 A. Yes, both brakes on the rear most trailer
7 axle.

8 Q. That is a safety issue?

9 A. That is.

10 Q. That's an out of service safety issue?

11 A. It is.

12 Q. Why is it that with hazardous materials
13 on you then sent him on to Columbus with that vehicle
14 without taking it out of service?

15 A. I believe the driver at this time was
16 destined to London, Ohio, for fuel. In that case I
17 followed him to London, Ohio, because the driver had
18 no tools to correct the defect so I escorted the
19 vehicle to a safe haven so he could affect repairs.

20 Q. In fact, didn't you tell him to go to the
21 CSX yard to affect the repairs?

22 A. I don't recall that.

23 Q. If Mr. Williams was to testify to that,
24 would you disagree with that testimony that you
25 directed him to drive to the CSX yard to affect

1 repairs?

2 A. I don't recall that dialogue.

3 Q. Okay. You then indicated that this is
4 the least severe packaging group hazard; is that what
5 your testimony was?

6 A. Yes. Packaging group III which this
7 shipment was was the least severe of packaging
8 designated by USDOT regulations.

9 Q. Okay. And this had a placard, HazMat
10 placard, on it and you indicated it was a class 8
11 hazard, correct?

12 A. Correct, yes.

13 Q. And you said it was properly placarded,
14 correct?

15 A. Yes.

16 Q. How did you determine that it was
17 properly placarded?

18 A. From information derived from the
19 shipping document and inspection of the cargo
20 transport vehicle, that it was placarded on all four
21 sides with the appropriate corresponding hazard
22 class.

23 Q. You didn't cut the seam and open the
24 container?

25 A. If I did, I would have identified that.

1 Q. Okay. So you didn't inspect the load,
2 correct?

3 A. I inspected the shipment.

4 Q. You inspected the shipment.

5 A. Shipping documents and container.

6 Q. Okay. But you did not inspect the
7 contents of the container, correct?

8 A. I can't recall if I did. If I inspected
9 the cargo, I would have identified that the -- if
10 there were a seal, I would have identified that the
11 seal was removed and replaced with a State of Ohio
12 seal to inspect the contents of the shipment.

13 Q. Right. And that's not noted on your
14 notes so it's fair to say if it's not noted on your
15 notes, you did not do it?

16 A. It's fair to say I did not change the
17 cargo seal.

18 Q. Okay.

19 MR. MOYER: May I approach the witness,
20 your Honor?

21 THE EXAMINER: Yes.

22 MR. MOYER: I am going to hand him RW10
23 and 11 which we previously provided to you.

24 Q. Officer Haskins --

25 THE EXAMINER: Could you provide one to

1 the Bench, please.

2 MR. MOYER: Yeah. I have got extras for
3 the Court, your Honor.

4 THE EXAMINER: Thank you.

5 MR. MARGARD: Mr. Moyer, would you
6 specifically identify what pages.

7 MR. MOYER: I will just give you a copy
8 with stickers on them.

9 MR. MARGARD: Thank you very much.

10 MR. MOYER: And for the record we've
11 provided these to opposing counsel in advance of
12 today's hearing.

13 Q. But directing your attention, if I could,
14 to what we've marked as Exhibit A, is that one of the
15 documents that you would have inspected on the date
16 of this stop?

17 A. It appears --

18 THE EXAMINER: Just for the record
19 marking Exhibit A is the Multimodal Dangerous Goods
20 Form, and Exhibit B is a dock receipt.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 MR. MOYER: That's correct, your Honor,
23 correct.

24 THE EXAMINER: Thank you. You may
25 proceed.

1 Q. Officer Haskins, would Exhibit A or
2 Exhibit B be documents that you would have reviewed
3 on October 22, 2009, after your stop of Mr. Williams?

4 A. It does resemble a shipping document that
5 is associated with this inspection, yes.

6 Q. Okay. And on both of those documents it
7 indicates the cargo that was contained in the
8 container, correct?

9 A. Yes.

10 Q. Okay. And of concern to us as we're
11 looking at Exhibit B, there's an indication of a
12 couple of skids with four batteries on it, two
13 forklifts, two chargers, with a total weight of 4,274
14 pounds, but the only thing we're really concerned
15 about here is the two skids with the four batteries,
16 correct?

17 A. Yes.

18 Q. Okay. And that's the basis -- that's
19 what brings us here today.

20 A. Yes, hazardous materials shipment
21 requirements, yes.

22 Q. You've just told us you did not open the
23 container, correct?

24 A. I don't recall physically opening the
25 container or the inspection of the cargo.

1 Q. Okay. You would agree with me, would you
2 not, that the only hazardous material in the battery
3 is the sulfuric acid, correct?

4 A. Yes, that's -- that is the component that
5 designates batteries as hazardous.

6 Q. That's the sulfuric acid, that's the
7 corrosive portion of the battery.

8 A. That's correct.

9 Q. Okay. You have no idea of the
10 2,330 pounds how much of that is the sulfuric acid,
11 do you?

12 A. No.

13 Q. Okay. Did you inquire of anyone at that
14 time or since how much of that 2,330 would be HazMat
15 corrosive?

16 A. Only from the shipping document did I
17 derive the weight.

18 Q. Okay. And that 2,330 is, in fact, what
19 you put on your report too, correct?

20 A. Yes.

21 Q. Okay. And so when you testified on
22 direct that there was 2,330 pounds of hazardous
23 materials, that's not technically correct, is it?
24 There's 2,330 pounds of batteries of which some
25 portion is sulfuric acid and hazardous materials,

1 correct?

2 A. Well, the battery which includes the
3 actual battery acid and the packaging is deemed to be
4 the hazardous materials under USDOT definition of a
5 hazardous material but there would be no way I could
6 determine how much sulfuric acid comprises the
7 packaging.

8 Q. Under what authority is it -- what
9 statute do you believe states that the entire weight
10 of the battery constitutes the weight of the
11 hazardous materials as opposed to simply the
12 corrosive portion of it or the battery acid?

13 MR. MARGARD: Your Honor, I'll object to
14 calling for a legal conclusion other than to the
15 extent the witness may know a specific section.

16 THE EXAMINER: I'll sustain unless you're
17 aware of the specific section.

18 MR. MOYER: Can I respond to that? He's
19 just testified to a legal conclusion. He's just
20 testified that it's the gross weight of the battery
21 that's the HazMat, not the sulfuric acid. Certainly
22 I ought to be able to inquire whether there is a
23 basis for that testimony. He said it, not me.

24 MR. MARGARD: Your Honor, I believe he
25 indicated there was a basis, that he understood it

1 was in the rules so what Mr. Moyer is asking for now
2 is a specific code section.

3 MR. MOYER: That's right. If he is going
4 to testify as an expert on it, I'm allowed to inquire
5 what the basis of his purported testimony in that
6 regard is.

7 THE WITNESS: Your Honor, I can answer
8 the question.

9 THE EXAMINER: Okay.

10 A. 49 CFR, the volume of transportation
11 regulations hazardous materials, and the definition
12 sections in Chapter 171 paragraph 8 there's a
13 definition of packaging and the packaging indicates
14 that the hazardous materials including the packaging
15 designates the entire hazardous materials.
16 Therefore, the weight of the hazardous materials and
17 the packaging as declared by the shipper determines
18 the hazardous materials description.

19 Q. So even if the -- even if the product
20 then would be a -- something that weighed 8,000
21 pounds and had a teaspoon of corrosive material in
22 it, it would be a hazardous material weighing 8,000
23 pounds?

24 A. Not necessarily true. It has to meet the
25 definition of a corrosive material found in that same

1 section under 171 to be classified as a hazardous
2 material by the shipper of the product.

3 Q. Okay.

4 MR. MOYER: May I approach again, your
5 Honor?

6 THE EXAMINER: Yes.

7 Q. Officer, would you agree --

8 THE EXAMINER: You're marking this E?

9 MR. MOYER: Yes. This is Respondent's
10 Exhibit E, Section -- copy of Code Section 172.504,
11 general placarding requirements.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 Q. Officer Haskins, would you agree with me
14 that Table 2 is a -- or, excuse me, corrosive
15 materials are a Table 2 material?

16 A. Yes.

17 Q. And would you agree with me that this
18 code section says that if a transport vehicle or
19 freight container contains less than 1,000 pounds
20 aggregate gross weight of hazardous materials, it is
21 exempt from placarding requirements?

22 MR. MARGARD: Your Honor, I am going to
23 object to this line of questioning. First of all,
24 the document says what it says. The law says what it
25 says. I don't see any point in asking Mr. Haskins if

1 the document says what it says but, furthermore,
2 there is no placarding violation being alleged here.
3 This simply isn't relevant.

4 THE EXAMINER: Response?

5 MR. MOYER: My response is if it wasn't
6 needed to be placarded, then he hasn't violated the
7 railroad crossing. If there's -- if it was a vehicle
8 that didn't need a placard, then he didn't need to
9 stop and it's our position he didn't need a placard
10 because it had less than 1,000 pounds of hazardous
11 material on it.

12 MR. MARGARD: Your Honor, the vehicle
13 was, in fact, placarded. That's the relevant
14 consideration here. Mr. Haskins has already
15 testified that the packaging constitutes part of the
16 weight. Mr. Moyer is free to argue the law in brief.
17 I don't know what this adds factually.

18 THE EXAMINER: I'll sustain the
19 objection. The law speaks for itself.

20 MR. MOYER: I don't have anything further
21 for this witness. Thank you.

22 THE EXAMINER: I do have a couple of
23 questions for you just before we get to if there is
24 any redirect.

25 - - -

EXAMINATION

By The Examiner:

Q. When you are approaching the grade crossing, your testimony was there was the Mr. Williams' vehicle, his truck, and then there were two -- two vehicles in front of you. You're in an SUV and you could -- to your recollection you could see his brake lights, but you never saw them activated.

A. That's correct.

Q. Is that correct? And also is there anything that would lead you to believe that he didn't stop other than his brake lights?

A. Yes. The fact that we were -- all of the vehicles on that particular intersection were traveling in the same direction and the relationship between myself and any of the other vehicles including the commercial vehicles did not change so there was no possible way that he could have stopped because I had a visual observation of the vehicle at all times and, of course, the passenger vehicles are not required to stop, therefore, all four vehicles proceeded through the crossing.

Q. And what was the speed limit of the road?

A. I believe the speed limit in that area is

1 45.

2 Q. Okay. And what were the weather
3 conditions at the time, if you recall?

4 A. I believe it to be clear and dry. Had it
5 been anything else I would have noted that in my
6 remarks.

7 THE EXAMINER: All right. Any redirect?

8 MR. MARGARD: No, your Honor, no
9 redirect.

10 THE EXAMINER: Then you are excused.

11 MR. MOYER: Could I have some recross?

12 THE EXAMINER: He has no redirect.

13 MR. MOYER: Not based on your questions?

14 MR. MARGARD: Can we go off the record
15 for just a second?

16 (Discussion off the record.)

17 THE EXAMINER: Back on the record.

18 MR. MARGARD: Thank you, your Honor. The
19 staff would like to call Mr. John Canty to the stand,
20 please.

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JOHN J. CANTY

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

DIRECT EXAMINATION

By Mr. Margard:

Q. Will you please state your name for the
record.

A. Yes. John J. Canty, C-A-N-T-Y.

Q. By whom are you employed and in what
capacity, please?

A. I am employed by the Public Utilities
Commission of Ohio. I am the Assistant Chief of the
Compliance Division in the Transportation Department.

Q. And your business address, please, sir?

A. 180 East Broad Street, Columbus, Ohio
43215.

Q. Can you please describe your job duties
and responsibilities for us?

A. Yes. As the Assistant Chief of the
Compliance Division, I am responsible for among other
things supervising the compliance officers and the
support staff in the Compliance Division. The
compliance officers are the ones who are responsible
for reviewing the inspection reports that come in
from the field, assessing those violations on the

1 computer record, sending out the letters and
2 notifications that are required to the responsible
3 parties as well as conducting a conference if a
4 conference is requested by the Respondent.

5 Q. Prior to your testimony today did you
6 have any personal involvement with this particular
7 inspection?

8 A. No.

9 Q. Were you responsible for supervising
10 individuals who did have responsibilities with
11 respect to this inspection?

12 A. Yes.

13 Q. Let me ask you first and foremost,
14 Mr. Canty, if you had an opportunity to review Staff
15 Exhibit 1, the inspection reports offered this
16 morning?

17 A. Yes, I have.

18 Q. And can you describe for us how this
19 inspection came to be in this form.

20 A. Generally, yes. The inspector in the
21 field in this case, Inspector Phil Haskins, would
22 have conducted the inspection. He would have entered
23 the information into his laptop computer using
24 software that's provided by the Commission. He would
25 have printed out a copy of the inspection report and

1 given that to the driver. The data elements then
2 would have been transferred to us electronically most
3 probably through his telephone line or his cable to
4 the Commission here and into our database here at the
5 Commission.

6 We then have several databases here at
7 the Commission we maintain that retains all of the
8 data elements that he has input into his computer.

9 Q. This particular document then is a record
10 that is maybe obtained by the Commission both in
11 electronic and in paper form; is that correct?

12 A. Yes, it is.

13 Q. And this to the best of your knowledge
14 and information is a true and accurate copy of that
15 information?

16 A. It is a copy. It is not an original,
17 yes.

18 Q. Mr. Canty, are you incidentally familiar
19 with the document that's been identified as Staff
20 Exhibit No. 2?

21 A. Yes. I am aware of that database. I
22 have reviewed it on occasion but not in this
23 particular case.

24 Q. But this is another database that is
25 maintained and a record that is maintained in the

1 ordinary course of business by the Commission?

2 A. Yes, it is.

3 Q. Mr. Canty, you indicated one of your job
4 responsibilities had to do with forfeiture
5 assessments, supervising individuals who determine
6 forfeiture assessments; is that correct?

7 A. That is correct.

8 Q. Have you reviewed the forfeiture
9 assessment in this case?

10 A. Yes, I have.

11 MR. MOYER: May I approach, your Honor?

12 THE EXAMINER: Yes.

13 Q. Mr. Canty, I have handed you a
14 single-page document that's been marked for purposes
15 of identification as Staff Exhibit No. 3. Can you
16 identify that document for me, please?

17 A. Yes. This is the forfeiture assessment
18 matrix that was completed regarding this case. It
19 was completed by Mr. Forbes, one of the compliance
20 officers employed here at the PUCO. It lists the
21 inspection report which was generated in the field by
22 Officer Haskins. It lists the Respondent's name, in
23 this case Robert A. Williams, and the violation that
24 was cited against him, the grade crossing violation.

25 Q. And this is the document that you earlier

1 testified you had reviewed with respect to this case?

2 A. Yes.

3 Q. This is, in fact, the actual forfeiture
4 assessment to assess a forfeiture to Mr. Williams in
5 this case; is that correct?

6 A. Yes, it is.

7 Q. There are a number of different
8 categories here with a number of different values in
9 them. How are those values used or determined in
10 reaching an assessment?

11 A. We have a nature -- what we call a nature
12 and gravity chart that we use in the HazMat -- in the
13 Compliance Division for HazMat inspections. It lists
14 the general categories of the HazMat violations as
15 well as the Federal Motor Carrier violations. It
16 divides them into various groups depending upon the
17 nature and gravity of the violation as well as who
18 would be responsible, the carrier or the shipper or
19 the driver.

20 We also have a document which assigns
21 point values based on the type of material being
22 transported as well as the weight. We take all of
23 those numeric factors into consideration. We plug
24 them into this which is essentially an Excel
25 spreadsheet to compute the value -- the monetary

1 value of the violation. In this case it came up to
2 \$400.

3 MR. MARGARD: May I approach, your Honor?

4 THE EXAMINER: Yes.

5 Q. Mr. Canty, I have handed you a multi-page
6 document that I have marked for purposes of
7 identification as Staff Exhibit No. 4. Can you
8 please identify this document?

9 A. Yes. This is exactly the document I was
10 referring to, the violation chart, the nature and
11 gravity points for the various violations that can be
12 completed during an inspection.

13 Q. Can you tell me how this chart was -- was
14 developed or where this information comes from?

15 A. It's original development predates my
16 employment in the Division. I cannot testify as to
17 its exact origin, but we have been using this chart
18 or versions of this chart since my employment in the
19 Division for the past 20 odd years.

20 Q. And the specific violations relate to and
21 refer to violations of the hazardous materials
22 regulations?

23 A. As well as Federal Motor Carrier
24 violations, yes.

25 Q. And are the weightings given to these

1 different factors based on any standard that you are
2 aware of?

3 A. Yes. We comply with the requirements of
4 the CVSA guidelines for assessing violations that are
5 discovered during inspections, Commercial -- V --
6 Commercial Vehicle Safety Alliance.

7 Q. Thank you. So these particular values
8 are consistent with the CVSA standards?

9 A. Yes.

10 Q. Would you please walk us through the
11 assessment -- and I suppose before I begin that you
12 indicated that Mr. Forbes completed this particular
13 assessment; is that correct?

14 A. That's correct.

15 Q. Is he someone under your supervision or
16 direction?

17 A. Yes, he is.

18 Q. And did you have an opportunity in
19 reviewing this document to determine whether the
20 assessment was properly done?

21 A. Yes. I reviewed and discussed it with
22 him.

23 Q. And in your opinion was it properly done?

24 A. It was properly assessed, yes.

25 Q. And in your opinion is the dollar amount

1 being assessed here correct and accurate?

2 A. Yes, it is.

3 Q. Will you please walk us through then the
4 determination of that amount.

5 A. Yes. Starting in the -- well, the only
6 column that has any data in it, 392.10(A)(3), the
7 violation failing to stop at a railroad grade
8 crossing, the first row there it says nature gravity
9 0 through 10 points. If you turn to the fourth
10 page -- fourth page of the violation, the chart,
11 under Federal Motor Carrier Safety Regulations Driver
12 Violations, it is the first paragraph under that
13 heading that says 1 through 4 points, it started with
14 4 point violations there, the fourth violation under
15 that heading is failure to stop at railroad grade
16 crossing so that is where the first point value would
17 come from so that the point value initially for this
18 violation is 4 points.

19 Moving down that column there are a few
20 more rows, extent of violation, actual harm, and
21 other circumstances, these are elements that we are
22 required to consider in our assessment of each
23 violation. Actual harm might be -- well, in this
24 case the value of zero is given for all three of
25 those but if there had been say an accident, some

1 property damage or environmental -- environmental
2 damage or evacuation required, any other
3 circumstances that might have applied, none of that
4 applied in this case so those values are all zero.

5 Q. Mr. Canty, if I can stop you briefly
6 before you go on, there is an indication under both
7 the extent of the violation and other circumstances
8 that a negative value could have been assigned.
9 Under what circumstances would a negative value have
10 been appropriate?

11 A. A negative value could possibly be
12 applied if there had been some mitigation of the
13 violation at the time. In this case I don't know
14 that there can possibly be any, either you crossed
15 the railroad tracks or you did not. I don't think
16 there could be any mitigation of that violation.

17 Q. Okay. Thank you. If you would continue
18 with your description.

19 A. So the row -- it says the row A subtotal
20 points, at that point what you're doing is adding up
21 the values in the column above which obviously still
22 adds up to 4. Row B, material hazard, as I
23 indicated, we take the type of material and the
24 weight into consideration.

25 On the next page it says Material Hazard

1 Chart. On the left side is the point value and the
2 right side is the hazard class or division. In this
3 case as we have already heard in the testimony, this
4 was a corrosive material which is a class 8. That
5 has a point value of 0.9. However, a point modifier
6 listed on the bottom left of that page if it's a PG,
7 packaging group, III which is the least severe of the
8 packaging groups that could be used, then if it's a
9 packaging group III, and it was in this case, you
10 would subtract .3 from the .9. That is what
11 Mr. Forbes did and so the value entered in row B
12 hazardous material -- I'm sorry, material hazard
13 would be .6.

14 The next column down is amount of
15 material. You turn to the last page, the amount of
16 material on this inspection was 2,300 pounds
17 approximately. That weight in the column on the
18 right-hand side of the page would be between 1,000
19 and 9,999 pounds for a point value of .4. So the
20 value of .4 was entered into row C. Row D, subtotal
21 of points is B plus C times A so in this case B plus
22 C, .6 plus .4, is -- equals 1, 1 times 4 is 4 so the
23 subtotal of points here is 4 so the value of 4 is in
24 that -- that row there, row D.

25 The next couple of rows down, E and F,

1 Respondent culpability and Respondent history, the
 2 Respondent culpability is a point value which can
 3 also be increased depending on the nature of the
 4 violation. If it was something other than a simple
 5 violation, if it was something done that was a
 6 egregious violation, I would say, as opposed to a
 7 simple not egregious violation, that could be
 8 increased in value. But in this case it is 1 and
 9 Respondent history can be 1, 2, or 4. That only
 10 applies to carriers. We don't have a Respondent
 11 history for shippers or drivers. That is always 1
 12 for a driver. So those two values are both 1.

13 Obviously 1 times 1 times 4 equals 4
 14 which is in row G, total points, and then you
 15 multiply 4 times the base value of -- the base value
 16 which is 100 and you come up with a forfeiture value
 17 of a total of \$400 for this violation.

18 Q. Thank you, Mr. Canty. Were you present
 19 during --

20 THE EXAMINER: Just for the record before
 21 you get to that can you just explain there are other
 22 columns here that do have some numbers? Do those
 23 have any significance, or is that just clerical
 24 error?

25 THE WITNESS: As in the column -- second

1 column over, second, third, and fourth?

2 THE EXAMINER: Has the same numbers and E
3 and F have numbers all the way across.

4 THE WITNESS: I am not sure why those
5 values carried over. This was the only violation
6 cited against the driver. So this is the only
7 violation that had an assessment.

8 THE EXAMINER: So the fact there are
9 numbers in these columns has no bearing on the
10 assessment of forfeiture?

11 THE WITNESS: No, none whatsoever. I am
12 not sure whether the compliance officer inadvertently
13 put those values in there. I see there are two
14 values that shouldn't be there, the .6 and the .4 in
15 row B and C, in the second column row B and C, but
16 I'm not sure if he inadvertently tabbed over into
17 that column and then didn't erase it. That would be
18 my best guest, your Honor.

19 THE EXAMINER: Thank you.

20 Q. (By Mr. Margard) Mr. Canty, were you
21 present during the cross-examination of Officer
22 Haskins by Mr. Moyer?

23 A. Yes, I was.

24 Q. And you heard the conversation and
25 discussion regarding weight of the material.

1 A. Yes, I did.

2 Q. And are you familiar with the hazardous
3 materials regulations?

4 A. Yes, I'm familiar with them. I have not
5 had training as recently as Officer Haskins, so in
6 that sense I would defer to his answer as opposed to
7 offering my own.

8 Q. Well, with respect to the amount of
9 material that is included on the forfeiture
10 assessment, is it your understanding that that's how
11 the amount of material is determined is the amount
12 reported on the inspection report based on shipping
13 documents --

14 A. Yes, it is.

15 Q. -- without respect to containers or
16 packaging of any sort?

17 A. Correct.

18 Q. Mr. Canty, you also indicated you were
19 responsible for the letters, notices, and so forth
20 that are sent out to indicate possible assessments to
21 drivers, carriers --

22 A. Yes.

23 Q. -- the like?

24 A. Yes, I am.

25 Q. Did you have an opportunity to review the

1 notices that were provided in this case?

2 A. Yes, I did.

3 MR. MARGARD: May I approach, your Honor?

4 THE EXAMINER: Yes.

5 Q. Mr. Canty, I have handed you a multi-page
6 document that's been marked for purposes of
7 identification as Staff Exhibit No. 5. Have you seen
8 this document before?

9 A. Yes, I have.

10 Q. Can you describe what this document is,
11 please?

12 A. Yes. This would be the first
13 notification that's required to be sent to the
14 responsible party. This is what is known as a Notice
15 of Apparent Violation and Intent to Assess Forfeiture
16 regarding the case in question here against
17 Mr. Williams. The letter is dated November 13, 2009.
18 It instructs Mr. Williams that we intend to make a
19 civil forfeiture assessment of \$400 against him for
20 the grade crossing violation. It directs him to
21 either pay the forfeiture or request a conference
22 within 30 days.

23 Q. Would you turn to the second page of that
24 document, please. And what is contained in this
25 portion of the document?

1 A. This is the notice that is referred to as
2 the Notice of Preliminary Determination regarding the
3 same case. This is dated February 12, 2010. This is
4 addressed to -- apparently to Mr. Williams' attorney,
5 Steve Moyer, at 9 East Kossuth Street here in
6 Columbus. This notice is sent after a conference has
7 been conducted, informs the Respondent or in this
8 case Respondent's attorney that a conference was
9 conducted, and we the Commission still intend to hold
10 Mr. Williams responsible for the violation at the
11 \$400 amount.

12 Q. These are documents that are regularly
13 maintained in the ordinary course of business here at
14 the Commission?

15 A. Yes, they are.

16 Q. Both in electronic and in paper form?

17 A. Yes, they are.

18 Q. And are documents that were sent to
19 Mr. Williams or to his attorney regarding his rights
20 in this matter?

21 A. Yes.

22 Q. And in your opinion was Mr. Williams
23 and/or his counsel properly served with all
24 appropriate notices in this case?

25 A. Yes, they were.

1 MR. MARGARD: Thank you, your Honor. I
2 have no further questions for Mr. Canty.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Moyer:

6 Q. Morning, Mr. Canty. How are you?

7 A. Good morning. Fine, thank you.

8 Q. If I could direct you to Staff Exhibit 3,
9 the forfeiture assessment section, if the amount of
10 material was less than 1,000 pounds, what would the
11 resulting change in that row C be?

12 A. Less than 1,000 pounds, let me refer to
13 Staff Exhibit 4, the hazardous amount chart. Less
14 than 1,000 pounds would be a value of .2 instead of
15 .4. The result would be essentially to reduce that
16 violation from \$400 to \$200.

17 Q. And this was not a violation that your
18 office considered to be an egregious violation?

19 A. Not in the sense that it was done
20 maliciously or -- I'll just leave it at that, with
21 malice.

22 MR. MOYER: Nothing further.

23 THE EXAMINER: Any redirect?

24 MR. MARGARD: I have no redirect, your
25 Honor.

1 THE EXAMINER: Okay. You're excused,
2 thank you.

3 MR. MARGARD: Your Honor, I would
4 respectfully move the admission of Staff Exhibits 1,
5 3, 4, and 5 noting that Staff Exhibit No. 2 had
6 already been recognized by the Bench, administrative
7 notice taken of that document.

8 THE EXAMINER: Okay. Any objection to
9 the admission of Staff Exhibits 1, 3, 4, and 5?

10 MR. MOYER: None.

11 THE EXAMINER: They will be admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 THE EXAMINER: Any other witnesses does
14 the Staff have?

15 MR. MARGARD: I have none, thank you.

16 THE EXAMINER: All right. Why don't we
17 take a short recess, 10 minutes, and then we will go
18 back on.

19 (Recess taken.)

20 THE EXAMINER: Let's go back on the
21 record.

22 MR. MOYER: Respondent would call Robert
23 Williams to the stand.

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ROBERT WILLIAMS

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

DIRECT EXAMINATION

By Mr. Moyer:

Q. Robert, would you please state your full
name for the record.

A. Robert Allen Williams, 573 Frebis,
F-R-E-B-I-S, Avenue, Columbus, Ohio 43206.

Q. And do you own or rent that house on
Frebis?

A. I own.

Q. Okay. And what effect would losing your
license for 60 days have on you?

A. Pretty devastating.

Q. How?

A. Our health insurance, we would lose our
health insurance. I have got a son and his two
daughters and wife living with us at this time. He
needs back surgery. 60 days would devastate me.

Q. Directing your attention to October 22,
2009, do you remember that day?

A. Yes, I do.

Q. Where were you driving that day?

A. I was coming from Celina, picked up a

1 load, heading back to the CSX yard in Columbus.

2 Q. Okay. And did that route take you on
3 Route 42?

4 A. That day it did, yes.

5 Q. Okay. And before you started your trip
6 that day, did you do a pretrip checklist?

7 A. Yes, I did.

8 Q. Tell the Court what you did in that
9 pretrip checklist.

10 A. As far as I checked the vehicle's lights,
11 I checked the tires, I checked the brakes as far as I
12 can check the brakes. I don't actually crawl under
13 the vehicle and measure the brakes when I pick up a
14 container but just checked my fluid levels and.

15 Q. Did the vehicle and the -- your load pass
16 the checklist?

17 A. As far as I -- yes, yes.

18 Q. Okay. And what was your load that day?

19 A. I was picking up a load at Crown Battery,
20 and I don't know -- I didn't know what it was. I
21 mean, I just go to pick up a load. I didn't realize
22 what -- it was a HazMat load. They did say it was
23 HazMat.

24 Q. Okay. And did -- can you look at
25 Exhibits A and B that are in front of you.

1 A. Yes.

2 Q. Okay. And are those -- do you recognize
3 those two documents?

4 A. Yes, I do.

5 Q. Are those documents that were given to
6 you for this load?

7 A. Yes.

8 Q. And was this a domestic load or an
9 international load?

10 A. International.

11 Q. Okay. Do you have an understanding as to
12 whether that changes any placarding requirements?

13 A. Yes. The requirements on international
14 regardless of the amount of the actual HazMat when a
15 container is being railed, aired, or flown out of the
16 country, they have to placard it regardless of the
17 amount of the actual HazMat or the chemical or
18 whatever is on it.

19 Q. Okay. All right. If I could direct your
20 attention, Robert, to Exhibit B, would you look at
21 that document.

22 A. Yes.

23 Q. Okay. And in looking at the middle
24 section of that document, can you tell the Court what
25 you were hauling in this container that day?

1 A. There was two lift trucks which were like
2 pallet jacks, electric work equipment, two -- well,
3 it was two attachments that go to the equipment,
4 add-on attachments, and then there was four
5 batteries, one on one pallet and three on the other
6 pallet strapped.

7 Q. Okay. What did the total weight of the
8 two pallets and four batteries weigh?

9 A. 2,330, 2,330 pounds including the
10 strapping and the pallet.

11 Q. Okay. And as you're driving down 42, do
12 you recall approaching the railroad tracks?

13 A. Yes.

14 Q. And tell the Court what you recall about
15 that.

16 A. As far as I recall, there was two
17 vehicles behind me. I did slow down, and I thought I
18 came to a stop.

19 Q. Okay. After you crossed the tracks, did
20 you see Officer Haskins?

21 A. Probably not -- probably could -- I was
22 probably a mile and a half, 2 miles across the tracks
23 before I realized he was back there. I seen a
24 vehicle with lights on. There was two vehicles
25 actually behind me and they did turn off and he

1 approached and I didn't realize it was an officer at
2 the time, still approached up closer to me with his
3 headlights on. He was flashing his lights and at the
4 time I thought it was a construction vehicle and then
5 I realized it was an officer.

6 Q. Okay. And you pulled over?

7 A. When I realized it was an officer, I did,
8 yes.

9 Q. Okay. And then did you guys then go on
10 to the bowling alley for him to do his inspection?

11 A. Right, yeah. It was a two-lane road.
12 There's not much room there.

13 Q. Okay.

14 A. He said proceed up to the bowling alley;
15 he was going to do a DOT inspection on me.

16 Q. Okay. When you got out of your truck up
17 at the bowling alley, what did Officer Haskins say to
18 you?

19 A. He mentioned -- he said you realize I
20 didn't -- you realize you didn't stop for the
21 railroad track back there. And I said, you know, oh,
22 I didn't? And I said I think I was preoccupied
23 because I was having an issue with my oil -- I had my
24 oil changed at the TA up there and I was going to
25 stop at the TA and I was kind of losing a little

1 pressure there and I might have been preoccupied,
2 maybe didn't come to a complete stop so I wasn't, you
3 know.

4 Q. What did Officer Haskins say to you?

5 A. He is doing a DOT -- he was going to do a
6 DOT, that's a level 1 inspection. And he said he
7 wasn't going to give me a ticket, you know, for
8 the --

9 Q. Railroad?

10 A. Railroad crossing, yes.

11 Q. And he did the inspection, correct?

12 A. I let it slide. I didn't even think
13 about it after that.

14 Q. Okay. He did the inspection, correct?

15 A. Yes, sir.

16 Q. Did he -- and he found that the brakes
17 weren't working on axle 5, correct?

18 A. Yes. That's on the actual container
19 itself. My tractor, he checked everything out on my
20 tracker; it was fine. Proceeded to check the
21 container and found that the fifth axle brakes were
22 out of adjustment, completely out, put me out of
23 service completely; yes, that's what he said.

24 Q. Okay. And where did he tell you to --
25 did he tell you to park the rig and get a tow truck?

1 A. No.

2 Q. What did he tell you to do?

3 A. He said he was going to allow me to
4 proceed on to the CSX rail yard and to have them put
5 it out of service and hand them the paper when I got
6 there.

7 Q. Is that what you did?

8 A. Yes, I did.

9 Q. Okay. Now, did the -- that was axle 5
10 that wasn't working. Does that mean -- how many
11 axles were on the container?

12 A. There's two axles on the container, got
13 three -- three axles on the actual tractor.

14 Q. They were all working.

15 A. Right. Everything was fine there. Then
16 that's the last axle, 5, on the rear of the container
17 or the chassis. The container sets on the chassis
18 but.

19 Q. So one of the two sets of brakes weren't
20 working on the trailer but the other one was.

21 A. Right. The fourth axle, I believe he
22 didn't mark it out. The fourth axle was fine, and
23 Officer Haskins said that the axle was, you know,
24 completely out which they say would put you out of
25 service.

1 Q. Okay. And, again, you indicated that
2 Officer Haskins indicated he was not going to cite
3 you for the railroad violation, right?

4 A. He said he wasn't going to give me a
5 ticket, yeah.

6 Q. All right. Did Officer Haskins open --
7 crack the seal and open the container?

8 A. No.

9 Q. And about how tall are your taillights on
10 the back of that chassis? Waist high? Below waist?

11 A. They are -- about 3-1/2 feet.

12 Q. Okay.

13 A. Maybe 4 feet depending on.

14 Q. Okay.

15 A. I would say 3-1/2.

16 MR. MOYER: All right. I don't have
17 anything further for Mr. Williams.

18 THE EXAMINER: Okay.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Margard:

22 Q. Mr. Williams, thinking back to
23 October 22, 2009, how did you start your day?

24 A. I start my day get up, shower, and dress
25 and coffee, and go to where my load assignment takes

1 me.

2 Q. And were you at home here in Columbus
3 when you did that?

4 A. Yes.

5 Q. Was your first assignment then to drive
6 to Celina?

7 A. Yes.

8 Q. And you drove empty to Celina, or did you
9 take cargo?

10 A. I drove empty.

11 Q. Just your tractor.

12 A. No, drove empty with the trailer and the
13 tractor up there to be, you know, live loaded.

14 Q. Is that the same trailer you were driving
15 at the time of the inspection?

16 A. Yes, sir.

17 Q. Okay. And where did you pick up the
18 trailer or where did you pick up the load for the
19 trailer, I should say?

20 A. Well, I picked up the load in Celina, I
21 guess that's how you pronounce it, Celina, Ohio.

22 Q. And specifically where in Celina did you
23 pick it up?

24 A. Celina, if that's how it's pronounced, at
25 the Crown -- I don't know if it's Crown Industry or

1 Crown Battery, but it's the Crown facility up there.

2 Q. At the shipper's facility.

3 A. Yes, sir.

4 Q. And this is an intermodal load; is that
5 correct?

6 A. Yes, sir.

7 Q. And Crown had already loaded the
8 container before you arrived; is that correct?

9 A. No. I sat there and live loaded.

10 Q. You loaded it yourself.

11 A. No. They loaded it while I sat there. I
12 mean, I brought the empty there and waited for them
13 to load it.

14 Q. I want to make sure I'm clear on what
15 we're loading. You waited as they loaded the
16 container, or you waited as they loaded the container
17 onto the trailer?

18 A. No. I waited as they loaded -- I took
19 the empty there.

20 Q. You took the empty container.

21 A. Right.

22 Q. Not just the trailer, the empty
23 container.

24 A. Right. The container sits on the
25 chassis, yeah. I took the chassis and the container

1 to the facility to be loaded.

2 Q. Okay. And watched as they loaded the
3 container?

4 A. No. They don't allow you to watch.

5 Q. But they loaded the trailer container
6 while you were in the chassis of the truck.

7 A. Yeah. I'm in my tractor.

8 Q. The cab of the truck. And they then
9 closed and sealed it.

10 A. Yes. I pull away. They come out and
11 close the doors and seal it up.

12 Q. Okay. Thank you. Is this a route you've
13 driven before?

14 A. Yes, yes.

15 Q. And you indicated --

16 A. Many times, yes.

17 Q. On that day your course took you on Route
18 42. Does it usually?

19 A. If I wasn't -- I was going to the TA on
20 42 and 70.

21 THE EXAMINER: What's the TA?

22 THE WITNESS: Truck --

23 MR. MOYER: Truck America.

24 THE WITNESS: Fuel and --

25 THE EXAMINER: Fuel stop.

1 THE WITNESS: Service.

2 Q. Specifically because of the oil problem
3 that you were noting?

4 A. Right. I had my actual PT -- my tractor
5 there on Sunday. This was like a Tuesday. And I was
6 losing a little bit of oil pressure. I would have
7 stayed on 33 to 270. That's what would have been my
8 normal route. There's no railroad crossing or
9 nothing, you know.

10 Q. That seems logical, of course.

11 A. Right, right. But I have been across 42
12 many times, probably 60 at least.

13 Q. So you were familiar with that route.

14 A. I used to come out of Bucyrus and go that
15 way all the time. I know the railroad track. I'm
16 real familiar with it. That's what you are getting
17 at, yes, I do.

18 Q. That helps but I was trying to figure out
19 exactly where you were headed and I assume any other
20 times that you would need service on that route,
21 that's probably the way you would have gone --

22 A. Right.

23 Q. -- to get to that truck stop. Okay.
24 Now, in response to Mr. Moyer's questions you were
25 describing the load that you were carrying. When you

1 arrived at the CSX yard, the container or the trailer
2 was unloaded?

3 A. No. They take the whole -- I drop the
4 container chassis and all off there. The container
5 is lifted off and put on a -- on the train.

6 Q. After you had already left.

7 A. Right, yeah. I don't have nothing to do
8 with that. I just park it, you know.

9 Q. And so you would have gone to the yard,
10 unhooked the trailer, and gone on about your
11 business.

12 A. Yes.

13 Q. So at any point did you ever see what was
14 inside the container?

15 A. Never, never. Less -- now, there's times
16 this is -- there's times when they will open them,
17 you know, they spot check them to make sure nothing
18 spilled, you know, and then they'll reseal it, you
19 know, change the document.

20 Q. But just to be clear though that didn't
21 happen this time?

22 A. Right, nothing.

23 Q. So you -- other than the description on
24 the documents Mr. Moyer showed you, you have no idea
25 what was in the container.

1 A. No.

2 Q. Okay. I guess the final question I have
3 for you is you were indicating the height of your
4 brake lights. When you apply the brakes, are there
5 any other lights that come on on the trailer?

6 A. No.

7 Q. Okay.

8 A. That was in the day so it would have been
9 just the brake lights. There wasn't no other lights
10 on.

11 MR. MARGARD: Okay. I don't think I have
12 anything further for Mr. Williams. Thank you, sir.

13 THE EXAMINER: Any redirect?

14 MR. MOYER: None.

15 THE EXAMINER: Okay. You're excused.
16 Thank you.

17 THE WITNESS: Thank you.

18 THE EXAMINER: Do you have any other
19 witnesses?

20 MR. MOYER: Yes. We would call --
21 Respondent would call Courtney Webb to the stand.

22 (Witness sworn.)

23 THE EXAMINER: You can proceed.

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COURTNEY WEBB

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

DIRECT EXAMINATION

By Mr. Moyer:

Q. Ms. Webb, would you please state your
full name for the record.

A. Courtney Renee Webb.

Q. You are going to need to keep your voice
up because of the air conditioning.

A. Courtney Renee Webb.

Q. And this young lady is taking down
everything you said so use a big voice, okay? All
right. Where did you work this summer?

A. I interned at Steve Moyer's law office in
Columbus, Ohio.

Q. Are you currently what?

A. I am currently an intern under Mr. Moyer.

Q. Okay. Are you going to college? Are you
going to law school?

A. Yes. I am a senior at Wittenberg
University this year and hope to go to law school
next year after graduation.

Q. Okay. And were you asked to do anything
as it relates to the Robert Williams case?

1 A. Yes, I was. Mr. Moyer asked me to
2 investigate the alleged charges against Mr. Williams
3 and specifically the placarding laws and whether or
4 not they were required.

5 Q. And did you prepare a summary of what you
6 found?

7 A. Yes, I did.

8 MR. MOYER: May I approach the witness,
9 your Honor?

10 THE EXAMINER: Yes.

11 Q. And, first of all, Courtney, can you
12 identify what Exhibit C is?

13 A. It is my investigation summary that I
14 prepared.

15 Q. Okay. And Exhibit -- what is the exhibit
16 to your right right there?

17 A. D.

18 Q. D, what is that exhibit?

19 A. This is a copy of pages 36 through 39 of
20 the general requirements for the Hazardous Materials
21 Compliance Pocketbook.

22 Q. That's this little handbook?

23 A. Yes.

24 Q. All right. First of all, what sources --

25 THE EXAMINER: Just for the record can

1 you -- that when you said "that," this little
2 pocketbook, could you identify that for the record.

3 MR. MOYER: This is the Hazardous
4 Materials Compliance Pocketbook with a copyright date
5 of 2008, I believe. I believe it's copyright 2008,
6 your Honor.

7 THE EXAMINER: Thank you.

8 Q. Courtney, what documents or resources did
9 you use to investigate the issue as it relates to
10 this compliance issue with Mr. Williams?

11 A. I used the Hazardous Materials Compliance
12 Pocketbook which would be Exhibit D, and I also used
13 certified copies of documents provided by Crown
14 Equipment Corporation in response to a subpoena
15 Mr. Moyer's office served, and I also used
16 information provided to me over the phone from the
17 technical support personnel at the Ohio GNB
18 warehouse.

19 Q. Okay. And, first of all, as it relates
20 to the Hazardous Materials Compliance Pocketbook,
21 we've marked as Respondent's Exhibit D the materials
22 that relate to corrosive materials, correct?

23 A. Uh-huh.

24 Q. And corrosive materials such as this are
25 a -- are on Table 2, correct?

1 A. Yes.

2 Q. Okay. And the page 37 then also refers
3 to when Table 2 materials are required to be
4 placarded, correct?

5 A. Yes.

6 Q. Okay. There's also an Exhibit E in front
7 of you.

8 A. Uh-huh.

9 Q. Do you see that?

10 A. Yes.

11 Q. And is that the federal statute that
12 summarizes the same thing that's on Exhibit D?

13 A. Yes.

14 Q. Okay. All right. And so the issue then
15 became whether or not the hazardous materials were
16 over 1,000 pounds or 554 kilograms, right?

17 A. Yes.

18 Q. And what did you do next to investigate
19 that issue?

20 A. With in accordance with the pocketbook or
21 other sources?

22 Q. Other sources.

23 A. Then I used documents that were provided
24 by a subpoena from Mr. Moyer's office, and they were
25 from Crown Equipment Battery.

1 Q. Okay.

2 A. Or just Crown Equipment. And they showed
3 that the batteries that were transported by
4 Mr. Williams were GNB batteries and also that they
5 gave me the model number and things such as that I
6 could use for reference.

7 Q. Can you state for the record what GNB
8 batteries are?

9 THE WITNESS: They are just a type of
10 battery that Crown Equipment purchases. They don't
11 make their batteries; they purchase them from other
12 companies.

13 THE EXAMINER: That's some designation of
14 Crown Batteries?

15 THE WITNESS: Yes.

16 MR. MOYER: Actually I believe GNB is a
17 brand of battery.

18 OFFICER HASKINS: It's a manufacturer.

19 MR. MOYER: It's a manufacturer, yes.

20 THE EXAMINER: Thank you.

21 Q. And were you able to identify out of the
22 weight of the battery how much was -- how much of it
23 was sulfuric acid and how much of it was other
24 materials?

25 A. Yes. They -- when I spoke to the

1 personnel of Crown Battery --

2 MR. MARGARD: Well, your Honor, I am
3 going to object at this point. This is clearly
4 hearsay.

5 MR. MOYER: My response is that the
6 Commission is -- that the strict Rules of Evidence
7 are not necessarily followed as it relates to these
8 hearings. And this is certainly an investigation
9 that was done as it relates to what the true nature
10 of the hazardous material was. It's not offered for
11 the truth of the matter asserted. It's just
12 background material for this argument.

13 MR. MARGARD: Your Honor, first of all,
14 while the rules of hearsay do not strictly apply, and
15 I certainly agree with that, I would dispute that
16 this isn't being offered for the truth of the matter
17 contained in it. Clearly, she's being asked to
18 testify as to the weight of hazardous materials, the
19 amount of hazardous materials which is information
20 that she gained no other way than through her
21 discussion with some unidentified employee, an
22 employee that they easily could have produced here.

23 Very clearly Mr. Moyer's office
24 subpoenaed records from this company. They very
25 easily could have subpoenaed a witness to testify as

1 to what these batteries contained. Instead they have
2 chosen not to do so and using an intern whose
3 investigative abilities seem to be very capable. It
4 is none the less not testified in this manner.

5 MR. MOYER: Well, the truth of the matter
6 asserted in this case is not what the weight of the
7 sulfuric acid is in this case. The truth of the
8 matter asserted is whether or not Robert Williams
9 violated a statute related to stopping at a railroad
10 crossing. This is clearly not the determinative
11 issue for this Court. There has been a complete lack
12 of any testimony from the Staff's standpoint as to
13 what the actual weight of the sulfuric acid which is
14 the hazardous material was.

15 We are offering this as the only evidence
16 so far to be presented as to what the actual weight
17 of the -- of the hazardous material is and this
18 should be admitted for that purpose.

19 THE EXAMINER: Can the court reporter
20 read the question that Mr. Moyer -- the last question
21 that he asked.

22 (Record read.)

23 THE EXAMINER: I'm sustaining the
24 objection.

25 MR. MOYER: Your Honor, for the record we

1 would proffer evidence that the actual weight of the
2 sulfuric acid was 1.6 kilograms times 4, the actual
3 weight being 206 kilograms of actual hazardous
4 material, 206 kilograms being less than one-half of
5 the \$1,000 threshold -- excuse me, the 1,000 --
6 excuse me, the 454 kilograms threshold for Table 2
7 materials. And we would proffer that for the record.

8 Q. (By Mr. Moyer) Courtney, can you identify
9 what Exhibit F is?

10 A. Exhibit F is a copy of the Material
11 Safety Data Sheet for lead acid battery which is what
12 was filled with acid.

13 Q. Was this document also received pursuant
14 to a subpoena?

15 A. Yes.

16 Q. Directing your attention to page 2 of the
17 MSDS sheet.

18 A. Uh-huh.

19 Q. Under composition/information on
20 ingredients where it says sulfuric acid, can you tell
21 me what the average percentage by weight of sulfuric
22 acid is according to this MSDS sheet for wet
23 batteries?

24 A. The average is 25 percent.

25 Q. Okay. And the total weight of the

1 pallets and four batteries was 2,330 pounds. What
2 would 25 percent of that be?

3 A. That would be 582, around .5 percent.

4 Q. Pounds.

5 A. Uh-huh.

6 Q. And, again, less than the 1,000-pound
7 threshold amount?

8 A. Yes.

9 MR. MOYER: Nothing further.

10 THE EXAMINER: Okay. Cross?

11 MR. MARGARD: I have no cross for the
12 witness. Thank you, your Honor.

13 THE EXAMINER: Okay. You're excused.
14 Thank you.

15 MR. MOYER: Your Honor, on behalf of the
16 Respondent we would move to admit Respondent's
17 Exhibits A, B, C, D, E, and F.

18 THE EXAMINER: Any objection?

19 MR. MARGARD: Yes, your Honor. I am
20 going to be objecting to Exhibits C, D, and F. I'll
21 object to Exhibit C on the basis of my previous
22 objection, that it contains hearsay information from
23 a source that easily could have been called to
24 testify, containing matter that is apparently
25 extremely important to the determination of whether

1 or not a violation occurred here, that is, the amount
2 of hazardous materials. It is offered by, again,
3 perhaps a capable witness but certainly not an expert
4 and certainly not expert enough to be able to testify
5 to this information.

6 I'll object to Exhibit No. D because
7 while this comes from a handbook this is not the
8 federal regulations. The same information
9 essentially is contained in Exhibit E to which I have
10 no objection, but I see no purpose served by the
11 inclusion of summary information contained in Exhibit
12 No. D.

13 With respect to Exhibit No. F while this
14 is apparently what it purports to be the indication
15 is this was produced pursuant to a subpoena but
16 there's been no indication in this record who
17 produced this information or in response to what
18 subpoena or, in fact, whether or not this had
19 anything to do with the batteries that were contained
20 in the shipment. It just doesn't have any relevance
21 at all.

22 THE EXAMINER: Okay. You want to
23 respond?

24 MR. MOYER: Yes, your Honor. First as to
25 Exhibit C, this investigative summary is no different

1 than the officer's note from which he testified to.
2 It summarizes what was done. It summarizes the
3 course of those materials. And we believe that it
4 should be admitted for that purpose. Do you want me
5 to go through each one of them?

6 THE EXAMINER: Yes.

7 MR. MOYER: All right. The next one that
8 I believe he objected to was Exhibit D. Exhibit D
9 was identified as pages from the Hazardous Materials
10 Compliance Pocketbook which drivers carry with them.
11 I see no reason why printed materials that drivers
12 carry with them shouldn't be admitted before this
13 Commission. We would offer it for that purpose.

14 And Exhibit F is an MSDS sheet. These
15 are prepared pursuant to federal statute. These are,
16 I believe, self-authenticating documents in that they
17 are prepared pursuant to federal requirements. They
18 are required to be carried with loads that have
19 hazardous chemicals. And when a -- when a document
20 is prepared as a result of a requirement of the
21 federal government, I believe that it should -- it is
22 self-authenticating on its own, but even if it's not
23 authenticating on its own, Ms. Webb testified as to
24 the source of that document.

25 Again, this Commission is not required to

1 strictly construe the Rules of Evidence as -- as his
2 Honor made clear at our pretrial conferences on this
3 matter. I did not object to many of the technical
4 evidentiary arguments that could have been based upon
5 both what the Ohio Administrative Code says and what
6 has been represented.

7 This is clearly evidentiary material,
8 Exhibit F, prepared in compliance with federal law
9 that was received pursuant to subpoena related to
10 this -- these batteries, this load, and it should be
11 admitted.

12 MR. MARGARD: May I respond, your Honor?

13 THE EXAMINER: Yes.

14 MR. MARGARD: With respect to the
15 investigative summary, Exhibit C, completely unlike
16 the investigator's report which was written based on
17 at the moment impressions, based on his observations,
18 based on discussions with the Respondent, completely
19 unlike that.

20 With respect to Exhibit D while this is
21 something that may be carried by drivers there's no
22 evidence in this record it was carried by this driver
23 or that this driver relied on this in any extent at
24 all. Once again, it's not the law. It's merely a
25 summary. The law is adequately contained in

1 Exhibit E.

2 With respect to Exhibit F, yes, Ms. Webb
3 did indicate it was provided in response to a
4 subpoena but nowhere in this record is there any
5 indication to whom that subpoena was directed or
6 other than the statements of counsel that it was
7 issued in this case or with respect to these
8 batteries, in fact, there is an indication here this
9 came from East Penn Manufacturing. We have no idea
10 if they had anything to do with these batteries. I
11 have no idea why they produced this.

12 And the mere fact it was produced
13 purportedly in response to some federal regulation
14 certainly doesn't make it self-authenticating. There
15 are plenty of things that are produced in response to
16 federal regulations that are full of untruths and
17 inaccuracies. There is simply no basis to include it
18 in the evidentiary hearing in this case.

19 MR. MOYER: May I respond just to that
20 last argument?

21 THE EXAMINER: Yes.

22 MR. MOYER: I would offer for the Court
23 the fact that in many, many courts of law MSDS sheets
24 are routinely admitted without any testimony, without
25 any further documentation for the reasons that I have

1 previously set forth. I've introduced them in
2 previous cases; opposing counsel has introduced them
3 in previous cases. These MSDS sheets are routinely
4 used and produced and relied upon by experts
5 throughout this country in the course of law so
6 especially as to that one, that document should be
7 beyond argument.

8 THE EXAMINER: Okay. Thank you. All
9 right. I am going to admit Respondent's A, B, D, and
10 E, but I am not going to admit C and F.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 THE EXAMINER: Is there anything further?

13 MR. MOYER: What was the basis for not
14 admitting Exhibit F?

15 THE EXAMINER: Well, you established no
16 foundation to the witness for this document. And
17 there's no information as to East Penn Manufacturing
18 Company. She didn't indicate her familiarity with
19 the document.

20 Is there anything further on behalf of
21 either party?

22 MR. MARGARD: Nothing, your Honor, thank
23 you.

24 THE EXAMINER: Okay. Do you want the
25 opportunity to file a brief?

1 MR. MOYER: Sure.

2 THE EXAMINER: Okay. Let's go off the
3 record.

4 (Discussion off the record.)

5 THE EXAMINER: The parties have requested
6 the ability -- the opportunity to file a brief, so
7 we've established a briefing schedule. Initial
8 briefs will be due by September 20 and the reply
9 briefs due by September 27. I would request that the
10 parties serve each other electronically with the
11 briefs. They can provide me a copy electronically
12 also but file a copy in the docket of the case.

13 Anything further in the case by either
14 side?

15 MR. MOYER: Nothing on behalf of the
16 Respondent, your Honor.

17 MR. MARGARD: Nothing, your Honor, thank
18 you.

19 THE EXAMINER: Okay. This matter will be
20 closed or adjourned.

21 (Thereupon, the hearing was concluded at
22 11:51 a.m.)

23 - - -

24

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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 Thursday, August 19,
2010, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5240)

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Summary: Transcript Transcript of Robert Williams hearing held on 08/19/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.