

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of D&J :
Transport Co., Inc., :
Notice of Apparent : Case No. 10-2968-TR-CVF
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

before Mr. Kerry K. Sheets, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10:00
a.m. on Thursday, April 21, 2011.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

APPEARANCES:

Mike DeWine, Ohio Attorney General
 William Wright, Section Chief
 Public Utilities Section
 By Mr. Werner L. Margard III
 Mr. Steven L. Beeler
 Mr. Devin D. Parram
 Assistant Attorneys General
 180 East Broad Street, 6th Floor
 Columbus, Ohio 43215-3793

On behalf of the staff of the Public
 Utilities Commission of Ohio.

Mr. James Thacker
 16586 U.S. Route 68
 Mount Orab, Ohio 45154

Pro se.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

- - -

WITNESSES	PAGE
Inspector Tad Rumas	
Direct examination by Mr. Margard	5
Cross-examination by Mr. Thacker	19
Redirect examination by Mr. Margard	31
Recross-examination by Mr. Thacker	34
John Canty	
Direct examination by Mr. Margard	36
Cross-examination by Mr. Thacker	46
Redirect examination by Mr. Margard	50
James Thacker	
Direct testimony	55

- - -

STAFF EXHIBITS	ID'D	REC'D
1 - Driver/Vehicle Examination Report	9	54
2 - Photograph of envelope	13	54
3 - Delivery Bill	13	54
4 - Loading Ticket/Bill of Lading	13	54
5 - Civil Forfeiture Violations Chart	38	54
6 - Forfeiture Assessment form	40	54
7 - 9/15/10 Notice of Apparent Violation and Intent to Assess Forfeiture letter	45	54
8 - 11/22/10 Notice of Preliminary Determination letter	45	54

- - -

1 Thursday Morning Session,
2 April 21, 2011.

3 - - -

4 EXAMINER SHEETS: The Public Utilities
5 Commission of Ohio has set for hearing at this time
6 and place case number 10-2968-TR-CVF, In the Matter
7 of D&J Transport Co., Inc. My name is Kerry Sheets.
8 I'm an attorney examiner for the Commission, and I
9 have been assigned to hear this case.

10 May I now have the appearances of the
11 parties, please, starting with staff.

12 MR. MARGARD: Thank you, your Honor. On
13 behalf of the Transportation staff of the Public
14 Utilities Commission of Ohio, Michael DeWine,
15 Attorney General, William Wright, Section Chief,
16 Public Utilities Section, by Assistant Attorneys
17 General Werner Margard, Steven Beeler, and Devin
18 Parram, 180 East Broad Street, 6th floor, Columbus,
19 Ohio.

20 EXAMINER SHEETS: Very good.

21 Is the respondent present?

22 MR. THACKER: Yes, sir.

23 EXAMINER SHEETS: Have a seat at the
24 table if you would. Do you want to give your name
25 and address.

1 MR. THACKER: James Thacker, 16586 U.S.
2 Route 68, Mt. Orab, Ohio.

3 EXAMINER SHEETS: Thank you.

4 Do we have any preliminary matters to
5 take care of today?

6 MR. MARGARD: I don't believe so, your
7 Honor.

8 EXAMINER SHEETS: Do you have witnesses
9 to call?

10 MR. MARGARD: I do, your Honor, thank
11 you. Your Honor, my first witness would be Inspector
12 Tad Rumas, please.

13 EXAMINER SHEETS: Raise your right hand.
14 (Witness sworn.)

15 EXAMINER SHEETS: Be seated.

16 - - -

17 INSPECTOR TAD RUMAS
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Margard:

22 Q. Can you state your name for us, please.

23 A. Tad Rumas.

24 Q. And by whom are you employed?

25 A. The Public Utilities Commission of Ohio.

1 Q. And at what address?

2 A. At 180 East Broad Street, Columbus, Ohio,
3 43215.

4 Q. And what is your job position?

5 A. My job position is employed as the
6 section chief or the supervisor of the New Entrant
7 section in the Transportation division of the Public
8 Utilities Commission.

9 Q. What is that section?

10 A. What the section entails is a background
11 investigation on all motor carriers who apply for and
12 receive a U.S. DOT number. Subsequent to January
13 1st, 2003, the United States has mandated that all
14 such carriers who operate in interstate commerce must
15 undergo a federal safety audit, and I manage the
16 staff and the program that handles that.

17 Q. Can -- I'm sorry. Please continue.

18 A. Please, go ahead.

19 Q. Can you give us a brief description of
20 your background and work experience, please.

21 A. Certainly. I have a college education in
22 chemistry, I served in the United States Marine Corps
23 and I function -- my job function was nuclear,
24 biological, and chemical warfare instructor. After
25 exiting the Marine Corps I applied for and went to

1 schooling to become a police officer. I graduated
2 from the academy and served as a police officer prior
3 to arriving at the Public Utilities Commission.

4 Since arriving at the Commission my job
5 duties were as a hazardous materials specialist and
6 then promoted to the current position I currently
7 have.

8 Q. When were you promoted to your current
9 position?

10 A. November of 2004.

11 Q. In that position do you have occasion to
12 conduct roadside inspections?

13 A. I do indeed. I am required by the
14 Commission and by the FMCSA to maintain my
15 certification and have done so for the last seven
16 years. In doing so I'm required to conduct roadside
17 inspections that include bulk transportation of
18 hazardous materials, placarded amounts of hazardous
19 materials in interstate and intrastate commerce.

20 Q. You mentioned to maintain your
21 certification.

22 A. Yes, sir.

23 Q. What certification is that, please?

24 A. The FMCSA requires that anyone that is to
25 conduct a roadside inspection and enter interstate

1 commerce must complete at minimum 32 roadside
2 inspections in the federal fiscal year.

3 Q. Do you have any other specialized
4 training or certifications other than the background
5 that you've already outlined?

6 A. I do. I attended, as per the direction
7 of the Public Utilities Commission for the job
8 specification, I attended the North American Standard
9 Level 1 both A and B, the general hazardous materials
10 course, the Level 6 radioactive shipment course, the
11 bulk transport of hazardous materials course, and I
12 am currently certified as a HM technician by the
13 state of Ohio as well.

14 Q. Excellent. Thank you.

15 As part of your duties were you
16 conducting roadside inspections on September 3rd of
17 2010?

18 A. I was.

19 Q. And do you recall what your specific job
20 assignment was on that date?

21 A. I was conducting roadside inspections at
22 the Fisher Road Marathon facility on the west side of
23 Columbus, sir.

24 Q. And on that date did you have the
25 opportunity to inspect a vehicle driven by a Roy

1 Morgan on behalf of D&J Transport Company?

2 A. I did.

3 Q. As you sit here and testify today do you
4 have an independent recollection of that inspection?

5 A. I do.

6 Q. Very good. Can you briefly describe to
7 us what you recall from your inspection on that date?

8 A. Based on recollection and based on the
9 inspection that I wrote, the inspection wasn't
10 awfully bad. As far as the mechanical soundness of
11 the vehicle, it was fine. The only violation that
12 was noted at the time of the inspection was a HM
13 violation of shipping papers.

14 Q. Now, you indicated a written report. You
15 prepared a written report as a result of your
16 examination?

17 A. I am, and I am required to do so, sir.

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

19 EXAMINER SHEETS: You may.

20 Q. Inspector, I have handed you a copy of a
21 two-page document that I've marked for purposes of
22 identification as Staff Exhibit No. 1. Do you
23 recognize this document?

24 A. I do indeed.

25 Q. And is this the written report to which

1 you were referring earlier?

2 A. It is, sir.

3 Q. And this was prepared by you, correct?

4 A. It is. It's a facsimile, but it is.

5 Q. Thank you.

6 In that regard I note that there are some
7 handwritten notations on this particular copy. Were
8 those your notations?

9 A. No, sir, they were not.

10 Q. With the exception of those notations and
11 the marking of this as a staff exhibit for purposes
12 of this hearing is it otherwise an accurate facsimile
13 of the report that you prepared?

14 A. It is.

15 Q. Now, it indicates that you conducted a
16 Level 1 or full inspection. Can you briefly describe
17 what that entails, please?

18 A. A full inspection entails both the driver
19 and the vehicle, ensuring that the driver is properly
20 licensed and the vehicle is properly maintained
21 including all paperwork to operate safely on the
22 streets of Ohio, the highway.

23 Q. Now, you've already indicated that you
24 found no mechanical issues with the vehicle; is that
25 correct?

1 A. Based on my inspection that is correct,
2 sir.

3 Q. Okay. Let me direct your attention to
4 the section of Staff Exhibit No. 1 labeled
5 Violations. There are a number of different columns
6 there, the first is for a section code that indicates
7 a 177.817(e). Is that a number that you put into the
8 report yourself?

9 A. It is indeed. Part of the software
10 that's utilized to conduct a roadside inspection and
11 produce this document gives the inspector the ability
12 to enter that information in, but yes, the inspectors
13 are required to understand where the code cite is for
14 violations noted.

15 Q. Very good. So that's a number that you
16 put in yourself.

17 A. I did indeed.

18 Q. Very good. In the final column labeled
19 Violation Description it says "Shipping paper
20 accessibility." Is that section populated
21 automatically, or is that something that you put in
22 manually?

23 A. It is populated automatically.

24 Q. Is there any portion of this description
25 that you put in manually or is this --

1 A. There is.

2 Q. Which portion did you add to this report?

3 A. Specifically, "Shipping paper was inside
4 of a plastic folder in between other delivery
5 paperwork."

6 Q. Now, do you recall what that plastic
7 folder was or looked like?

8 A. I do. It was an opaque folder with
9 various paperwork, pieces of paperwork in it.

10 Q. Now, you said "plastic" and "opaque."

11 A. Yes.

12 Q. Could you see through this folder at all?

13 A. By the definition, you couldn't make --
14 distinguish things through it, but you could see
15 through it, but not where you could -- you could
16 actually see what was behind and inside the folder.
17 You could see that something was there, but couldn't
18 distinguish it.

19 Q. Thank you.

20 The respondent today has brought a folder
21 with him. Have you had an opportunity to observe
22 that folder in the room today?

23 A. I have not.

24 Q. The respondent also has provided copies
25 of those documents to the staff.

1 MR. MARGARD: Your Honor, may I approach?

2 EXAMINER SHEETS: You may.

3 Q. Inspector Rumas, I've handed you a
4 one-page document marked for purposes of
5 identification as Staff Exhibit No. 2. Does this
6 appear to be the opaque folder to which you are
7 referring?

8 A. Except, to the best of my recollection,
9 there was no writing on the outside of the folder.

10 Q. At the time of your inspection you don't
11 recall any writing identifying these as HM,
12 presumably HazMat, shipping papers.

13 A. I do not.

14 Q. Thank you.

15 Do you have a recollection of the
16 documents that were contained within that folder?

17 A. I do.

18 MR. MARGARD: Your Honor, may I approach?

19 EXAMINER SHEETS: You may.

20 Q. Inspector, I've handed you two documents,
21 one marked for purposes of identification as Staff
22 Exhibit No. 3 that has in the upper left-hand corner
23 the notation "Delivery Bill" and one marked for
24 purposes of identification as Staff Exhibit No. 4,
25 located immediately below that marking is "Loading

1 Ticket/Bill of Lading." Have you seen these
2 documents before, sir?

3 A. I have.

4 Q. To the best of your recollection, are
5 these documents that were contained within the folder
6 that you've identified?

7 A. They are.

8 Q. Can you briefly describe, to the best of
9 your knowledge, what these documents are?

10 A. One meets the definition found in the
11 Code of Federal Regulations in Title 49 of a shipping
12 paper and one does not.

13 Q. And which one meets that definition?

14 A. The one marked Staff Exhibit No. 4.

15 Q. And can you please explain to me why you
16 believe that meets the statutory definition or the
17 definition of the rule?

18 A. Title 49 of the Code of Regulations in
19 section 172.202 provides that a shipping envelope
20 must contain the following: A proper shipping name,
21 a hazard class, an ID number, a packing group, and
22 unit of measure when transported in intrastate or
23 interstate commerce. The second form does not
24 include those pieces of identification and,
25 therefore, cannot be considered as a shipping paper.

1 Q. Very good. Can you help us identify
2 those items on these two documents, please?

3 A. I can, but they're kind of --

4 Q. To the best of your ability.

5 A. If you look under Information, about
6 halfway down, you can barely make out, where it says
7 "PG" and then two Is.

8 Q. I see that.

9 A. That's referred to as a packing group
10 which indicates to the inspector the type of
11 volatility or how dangerous something can be within
12 its class. You can see to the right, where it says
13 "Gallons 8506," that is a unit of measure that's
14 commonly accepted on a roadside inspection. I cannot
15 make out the rest of it, however, during the
16 inspection that was -- those other items that I can't
17 see were present.

18 Q. Very good. Can you please describe to us
19 why Staff Exhibit No. 3 does not meet those same
20 criteria?

21 A. Because, as previously stated, the
22 regulations provide that a shipping paper must
23 contain the proper shipping name, the hazard class,
24 the ID number, and the packing group, as well as a
25 unit of measure, and none of which are on what's

1 referred to as a delivery bill.

2 Q. I do see the same 8506 notation.

3 A. Uh-huh.

4 Q. Would that constitute the unit of
5 measure?

6 A. That could be a unit of measure, yes,
7 sir.

8 Q. But the other elements that you described
9 are missing; is that your opinion?

10 A. That's correct.

11 Q. Okay. Now, to the best of your
12 recollection, let me ask you first of all, do you
13 recall which order these documents were in in the
14 envelope?

15 A. I do.

16 Q. In what order did they appear?

17 A. Staff Exhibit No. 3 was on top and Staff
18 Exhibit No. 4 was underneath.

19 Q. And it's your understanding of the
20 regulations that Staff Exhibit No. 4 was required to
21 be on top?

22 A. It is what the regulations state.

23 Q. Let me just go back to the day of the
24 inspection. As you approached the vehicle, was the
25 driver seated in the driver's seat in the vehicle?

1 A. He was.

2 Q. Was he restrained at the time?

3 A. He was.

4 Q. And did you ask him for the shipping
5 papers?

6 A. I did.

7 Q. And do you recall where those shipping
8 papers were located within the vehicle?

9 A. I do believe that they were on the seat
10 at the time of the inspection.

11 Q. On the passenger seat next to him?

12 A. The passenger seat.

13 Q. Okay. Were you able to see this opaque
14 envelope on the top of whatever else was on that
15 seat?

16 A. I was not.

17 Q. Do you recall where it was on the seat?

18 A. At the point of inspection, based on the
19 size of the vehicle, once the driver reached for it I
20 stood up on the stoop to see, by the time I had, it
21 was in the driver's hand.

22 Q. So you're not sure, it very well could
23 have been on the top of whatever else was on that
24 seat.

25 A. There was nothing else on the seat, to

1 the best of my recollection, other than that.

2 Q. But this envelope was within the driver's
3 reach?

4 A. It was.

5 Q. Okay. Thank you.

6 To the best of your knowledge, would this
7 envelope have been readily visible to somebody
8 entering the driver's compartment of the vehicle?

9 A. It would have been.

10 Q. Would it have been readily identifiable
11 as the shipping papers?

12 A. It would not have been.

13 Q. Was there anything else on the shipping
14 paper, a tab for instance, that would have identified
15 it as the shipping papers --

16 A. There was not.

17 Q. -- to somebody looking at this envelope?
18 There was not.

19 Do you recall any conversation that you
20 had with the driver about the shipping paper at the
21 time of your inspection?

22 A. I do not.

23 Q. You prepared a copy of the report that's
24 identified as Staff Exhibit No. 1 and provided that
25 to the driver; is that correct?

1 A. I did.

2 Q. Did he at the time that he received a
3 copy of that report, to the best of your
4 recollection, complain to you about your findings or
5 make any comment to you about your findings?

6 A. To the best of my recollection, I don't
7 remember any commentary being offered at the time of
8 the inspection.

9 Q. Is there anything else about this
10 inspection that you think is important for the
11 Commission to know in making its decision in this
12 case?

13 A. No.

14 MR. MARGARD: Thank you, your Honor. I
15 have no further questions for Inspector Rumas.

16 EXAMINER SHEETS: Does the respondent
17 have any questions?

18 MR. THACKER: Yes, I do.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Thacker:

22 Q. Mr. Rumas, you said you've been on the
23 PUCO unit for how long?

24 A. I have been employed here at this
25 facility for seven years.

1 Q. That's good. And you're in training.
2 Can you tell me how many inspections that you done in
3 this particular year?

4 A. In this year?

5 Q. No. In the --

6 A. Or the year of this?

7 Q. Yeah. Do you know?

8 A. I do not know.

9 Q. Roughly.

10 A. I would guess somewhere in the range of
11 40 to 50.

12 Q. Forty --

13 A. At that point.

14 Q. Okay. So that's 40 or 50 out of 365 days
15 out of the year. So your normal job is training,
16 right?

17 A. I'm not sure what your --

18 Q. You're training other HazMat people, from
19 my understanding, to do this job.

20 A. My duties include roadside inspections.

21 Q. Mr. Rumas, I got a question. Have you
22 ever been to an accident scene involving a gasoline
23 tanker laying on its side?

24 A. I have.

25 Q. Were you the first one there?

1 A. I was not.

2 Q. So given that information, in the event
3 of an accident, it is the PUCO's job to protect the
4 public, right?

5 A. It is.

6 Q. Very important. Mr. Rumas, I've done
7 this for 31 years, too, so I'm kind of familiar with
8 it too. I've been to several accidents and actually
9 cleaned up several accidents. Would it be important
10 if that truck was loaded or empty?

11 A. Would it be important if the truck were
12 loaded or empty? Based on the flammability of --
13 we're talking about gasoline?

14 Q. Yes.

15 A. It would make no difference from the
16 ignition source.

17 Q. It would make no difference --

18 A. It would not.

19 Q. -- from the ignition source.

20 A. If it's empty, it's defined as the
21 regulations --

22 Q. I understand.

23 A. -- or empty as in purged.

24 Q. If you was to leak out 5,000 gallons of
25 product and it was raining 2 inches an hour like it

1 did the other night, would it not be important to
2 know how much is on that truck?

3 A. Depending on the admissibility of
4 gasoline in the water, I would assume it would enter
5 into the conversation, certainly.

6 Q. In other words, it could flow very far
7 downstream and become a hazard. In a 2-inch rain
8 isn't it even possible that the trailer could leak
9 several hundred gallon and end up somewhere and
10 people not even being aware of it?

11 A. I would assume.

12 Q. Okay. That would be one of my
13 major . . .

14 Your Exhibit 4, now, I understand what
15 you're saying, it's got the codes and, Mr. Rumas, you
16 did a fine job, I mean, you're doing your job and I
17 understand that. Is that truck loaded or empty?

18 A. Based on this shipping -- you're talking
19 about Staff Exhibit No. 4?

20 Q. Staff Exhibit No. 4, is that truck loaded
21 or is that truck empty?

22 A. It's loaded. Based on Staff Exhibit
23 No. 4 it was loaded.

24 Q. So, in other words, you have no way of
25 really detecting the amount of responsibility that

1 truck has at that point. What I'm getting at, if you
2 was a fire department, wouldn't you want to know if
3 that was loaded or empty? I mean, I did the cleanup
4 crew and had to go drill the tanks and get the
5 product off. Is it not my assumption that they will
6 not sit a tank up unless it's empty?

7 A. I'm not sure what you're asking.

8 Q. What I'm getting at, why is No. 3 -- I
9 realize No. 3 was in this document. Is this the
10 envelope that you're talking about, sir?

11 MR. THACKER: I don't have three of them,
12 your Honor. I just have three [verbatim].

13 A. Based on my recollection this is not the
14 envelope with the current -- in the current state
15 it's in right now.

16 Q. Okay. And you're a hundred percent sure
17 of that.

18 A. Based on my recollection, that is not the
19 envelope that was provided to me during the time of
20 the inspection.

21 Q. Mr. Rumas, I put them in every truck and
22 I specifically do it that way because I've had these
23 inspections before, and I had one truck pulled over
24 within one hour twice, and because he put the PUCO
25 paper that you filled out on top of it he was in

1 compliance, and I did have to pay that \$600.

2 So at that point in time, which was long
3 before this, I had to come up with something that
4 would make it accessible and if a truck is on its
5 side -- I guess my question would be to you if it's
6 laying on the seat or it's in the driver's door, say
7 a United Dairy Farmers Prescott tank flipped over,
8 rolled three times, are you likely to find onion
9 paper in a door or a seat?

10 A. Based on that information you've provided
11 to me, and I have responded to an incident, I would
12 feel uncomfortable responding if the driver was
13 deceased. If the placards were ripped off, the
14 information that you have provided at this time that
15 says "HM Shipping Papers," I would feel uncomfortable
16 because the first paper I would come to would not be
17 a shipping paper which would make me feel as if they
18 weren't truly shipping papers.

19 Q. But if it's a manila envelope, where are
20 you going to look for it?

21 A. That would be the first place I would
22 look.

23 Q. In the passenger seat? The driver's
24 door?

25 A. They're required to be maintained in

1 certain places in the vehicle, yes.

2 Q. So --

3 A. But the question you asked me was --

4 Q. The only problem we're going to have with
5 this is you're saying, and I respect the fact that
6 they're going to take your word over ours, and my
7 driver no longer works for me, so I'm kind of here on
8 my own recognizance, but as the owner of the company
9 or one of the owners of the company I know how I give
10 each driver and I give him the paperwork.

11 Now, as the owner of the company I have
12 no way of sitting in that truck with him and making
13 sure that he does everything properly, and he's not
14 the one that gets the ticket, correct?

15 A. Correct.

16 Q. Right. So I'm wanting to establish the
17 fact that was this truck loaded or empty when it
18 pulled into Marathon?

19 A. Based on the information provided to me
20 at the time of the inspection it was loaded with
21 8,506 gallons of fuel.

22 Q. Isn't it predominant in your field that
23 the delivery bill, even though you say it doesn't
24 have, but it does tell you how many compartments is
25 on that trailer?

1 A. I'm sorry. I don't understanding what
2 you're asking me.

3 Q. This bill of lading, your No. 4, does
4 that tell you how many compartments is on the
5 trailer? Does that tell you the construction of the
6 trailer? You're the inspector.

7 A. The delivery bill tells me that -- I'm
8 sorry.

9 Q. No. 4.

10 A. No. 4.

11 Q. How many compartments is on that trailer?

12 A. It appears to be -- I can't -- it appears
13 to be four. I can't see if it's a -- I can't see it.
14 It's a cargo tank with 8,500 gallons. I can't see --
15 you're asking me is it commonly held if they are
16 compartmentalized fuel trucks?

17 Q. Right.

18 A. Yes, it's commonly held. That does
19 commonly happen. There are compartmentalized 406s
20 and 306s.

21 Q. But the bill of lading, it doesn't say
22 that, does it?

23 A. It does not tell me the compartmentalized
24 that I can see.

25 Q. Right. Wouldn't it be helpful for you to

1 have the delivery bill? Would not the delivery bill
2 show you that the truck is empty, that your threat is
3 less likely, because it shows the compartments on
4 your Staff Exhibit No. 3 -- does it not show what's
5 in each compartment? How many gallons in each
6 compartment? Does it not say it's no-lead gasoline?
7 And with these two put together does that not give
8 you a perfect idea what's in that truck?

9 A. Are you asking me if it's helpful that
10 the delivery bill is included?

11 Q. Yes.

12 A. Certainly it would be helpful.

13 Q. Then why would the driver be hurting the
14 safety of the public? He's giving the information.
15 See, I'm the one that designed these so I guess I'm
16 the bad guy here.

17 A. Okay.

18 Q. But it just seems to me one way or the
19 other all the information I could get on an accident
20 scene to help me distinguish if I've got a rupture in
21 number 1 or a rupture in number 2 or a rupture in
22 number 3, the first thing they're going to ask me is
23 how many gallons are on the truck and what
24 compartment it's in.

25 A. To answer your question, it's commonly

1 held in response of a flammable liquid that the fumes
2 are what ignite. So to me, which I have been on and,
3 as you've stated, you have been on, I honestly could
4 care less how much is on there at the point when I'm
5 making entry because the ignition source is what I'm
6 concerned with, and the citizens around.

7 It's commonly held they are flammable
8 liquids, but the fumes are what ignite. So in any
9 way if the tank has not been purged, it will ignite,
10 and under pressure it will detonate, for lack of
11 better words, if it has 1 gallon or if it has 8,506
12 gallons.

13 The second question you asked me was
14 would it be helpful. I'm sure it will be helpful.
15 However, 177.817(e) of Title 49 provides that the
16 shipping paper, which is a proper shipping paper,
17 must be tabbed or on top. The fact that it's helpful
18 I won't dispute. The fact that it's in violation I
19 will.

20 Q. Okay. All I can tell you is this is what
21 was in the truck.

22 A. Understood.

23 Q. Did you tell the driver that you wanted
24 it paper clipped to the outside of this folder?

25 A. I did not.

1 Q. Well, I can't prove that because he's not
2 here.

3 If that's in the passenger seat, our only
4 argument here is going to be whether it said
5 "Shipping Papers" or it didn't say "Shipping Papers."
6 That was the only thing in the seat, correct?
7 Nothing in the door.

8 A. To the best of my recollection.

9 Q. Okay.

10 A. However, having an envelope that has "HM
11 Shipping Papers" on it does not meet the definition
12 of being tabbed or on top.

13 Q. Now, why --

14 A. Let me -- if included inside of that
15 envelope are various paperwork, whether they're
16 helpful or not, the definitions of the Code of
17 Federal Regulations clearly state that the shipping
18 paper, not the envelope that it's contained within,
19 the shipping paper itself must be tabbed or on top.

20 Q. Shipping papers -- let me -- must be
21 readily visible to someone entering the driver's
22 truck or in a holder mounted inside the door.

23 EXAMINER SHEETS: Excuse me. What are
24 you reading from?

25 MR. THACKER: Sir, I'm reading from the

1 HazMat book.

2 EXAMINER SHEETS: Okay. What section of
3 that are you reading from?

4 MR. THACKER: This would be the section
5 in regards -- page No. 53. I mean, he's quoting it
6 right, any hazardous material shipping papers must be
7 clearly within -- with any other papers it must be
8 clearly distinguished either by tabbing or having it
9 appear first.

10 EXAMINER SHEETS: What is your question?

11 MR. THACKER: I don't know what I have a
12 question for, your Honor. I'm just trying to
13 establish the fact that I don't feel that it's in the
14 best regards of public safety to squabble over
15 whether the delivery bill which says you're dealing
16 with an empty truck, I did it too many times --

17 THE WITNESS: Sir, I'm not here to
18 squabble.

19 EXAMINER SHEETS: You'll have a chance
20 later on to testify.

21 MR. THACKER: Okay.

22 EXAMINER SHEETS: Do you have any more
23 questions for this witness?

24 MR. THACKER: No. That would be it.
25 That would be it. He done -- he told the truth.

1 EXAMINER SHEETS: Do you have any
2 follow-up questions?

3 MR. MARGARD: Just for clarification
4 sake, if I can, your Honor.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Margard:

8 Q. Inspector, you've been shown an envelope.

9 A. I have.

10 Q. And you indicated that the envelope, at
11 least as you see it today, is not at least in the
12 same condition as the envelope you saw on the day of
13 the inspection?

14 A. I am.

15 Q. Does it appear that it could be the same
16 envelope? Do you remember if it was purple?

17 A. It could very well be.

18 Q. Okay. But it was an envelope like this?

19 A. It could very well -- to my best
20 recollection, it could be.

21 Q. Okay. Very good.

22 Would an envelope like this with papers
23 inside and the shipping paper on top but not tabbed
24 have met the regulations, in your opinion?

25 A. It would not.

1 Q. If an envelope like this with the various
2 documents inside, the shipping paper on top
3 specifically tabbed to indicate that it was the
4 shipping paper, would that have met the regulations?

5 A. Would you please repeat the question?

6 Q. Absolutely. If the documents that we
7 have seen today, Staff Exhibits No. 3 and 4, had been
8 included inside the envelope that you have seen today
9 with Staff Exhibit 4 on top or indeed anywhere inside
10 that envelope but with a tab on this document that
11 indicated that it was the shipping paper, would that
12 have met the regulations, in your opinion?

13 A. It would. If it was tabbed or on top,
14 whether in that envelope or not, it would have met
15 specifically what Title 49 states should pretty much
16 be used in accessing.

17 Q. So, in your opinion, the reason we have a
18 violation here today is because, one, the shipping
19 paper was not on top of everything including the
20 envelope, or, in the alternative, two, that the
21 shipping paper was not tabbed within this envelope.

22 A. No. It's a common occurrence on a
23 roadside inspection that if you have a stack of
24 papers, that there's got to be some way to hold them.
25 Paper clip. A folder. The regulations provide in

1 177.817 that if -- however it's transported, as long
2 as it's transported in the correct manner, that the
3 shipping paper, specifically the shipping paper as
4 provided in 172.202 of Title 49, is either tabbed or
5 on top.

6 So to me, to answer your question, it
7 wouldn't matter to me if it was in an envelope that
8 said "HM," was blank, was a manila envelope, clear or
9 opaque. As long as it's tabbed and on top and
10 clearly accessible in conformance with the
11 regulations it would not be a violation.

12 Q. Now let me back up a little bit because I
13 want to be clear about that. If this envelope had
14 not been marked as Staff Exhibit 2 was, HM Shipping
15 Papers, if there had been no marking --

16 A. Yes.

17 Q. -- on it, but there were documents inside
18 and the shipping paper was tabbed inside, would that
19 have satisfied the regulations?

20 A. It would have.

21 Q. Even though you would not have
22 necessarily known to look in the envelope to find
23 that shipping paper there.

24 A. It would have if it was tabbed.

25 Q. Okay. But in this case the shipping

1 paper, Staff Exhibit 4, was neither on top nor
2 tabbed; is that correct?

3 A. That is correct.

4 MR. MARGARD: That's all I have. Thank
5 you, your Honor.

6 MR. THACKER: Can I ask?

7 - - -

8 RECROSS-EXAMINATION

9 By Mr. Thacker:

10 Q. Are you familiar with Brent Kiser?

11 A. I am familiar with Brent Kiser.

12 Q. The day in question I was going through a
13 full-scale audit in my office and when you were
14 inspecting him and Sonny had called me with the
15 information. I walked up to where I keep all these
16 folders and laid it on the desk. You know, the only
17 information I can get is from you guys. So if I've
18 got Brent Kiser, would he be respectable in this
19 business?

20 A. I'm sorry. You said the only information
21 you receive is from us guys. I'm not sure what you
22 mean.

23 Q. Well, that's not the only information.
24 But in that particular day I laid this down in front
25 of another PUCO investigator who was doing a

1 full-scale audit in my office and he said that if I
2 did that right there, which was on it at the time,
3 just by having this containing the information that
4 the shipping papers are inside -- and can you see
5 through this, Mr. Rumas?

6 A. I'd have to see something inside of it,
7 but presumably I could see into it.

8 Q. Okay. I just want to clarify,
9 Mr. Rumas --

10 A. Certainly.

11 Q. -- if you can see through it.

12 A. I can.

13 MR. THACKER: Okay. No further
14 questions.

15 EXAMINER SHEETS: You're excused.

16 (Witness excused.)

17 EXAMINER SHEETS: Do you have another
18 witness?

19 MR. MARGARD: I do, your Honor. Staff
20 would call Mr. John Canty to the stand, please.

21 (Witness sworn.)

22 EXAMINER SHEETS: Be seated.

23 - - -

24 JOHN CANTY

25 being first duly sworn, as prescribed by law, was

examined and testified as follows:

DIRECT EXAMINATION

By Mr. Margard:

Q. Please state your name.

A. John Canty, C-a-n-t-y.

Q. And by whom are you employed?

A. The Public Utilities Commission of Ohio.

Q. And at what address, please?

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

Q. And in what capacity are you so employed?

A. I'm the assistant chief of the Compliance
division.

Q. What are your duties and responsibilities
in that position?

A. Among other duties I am responsible for
supervising the employees who send out the various
notices such as the notice of apparent violation and
intent to assess a forfeiture from roadside
inspections which would advise the proper respondent
that they have been cited for a violation and the
intent to assess them a civil penalty.

Q. How long have you been performing those
duties?

A. Approximately 19 years.

1 Q. Thank you, sir.

2 In the course and scope of your duties
3 and in preparation for your testimony here today have
4 you had an opportunity to review the Commission's
5 file with respect to this inspection?

6 A. Yes.

7 Q. Have you had an opportunity to inspect
8 the documents that have been previously marked as
9 Staff Exhibits 1 through 4, the report of inspection,
10 the copy of the envelope, the delivery paper, and the
11 shipping paper?

12 A. Not all of those, but most of those
13 documents, yes.

14 Q. Okay. The inspection report at least?

15 A. Yes.

16 Q. Thank you.

17 Can you explain to us how forfeitures are
18 determined in cases involving violations of the
19 hazardous materials regulations?

20 A. Yes. In the Compliance division we have
21 a penalty chart which lists the various categories of
22 violations, divides them by severity and by category
23 and by respondent, it assigns a point value to those
24 violations. We then take those point values and put
25 them on an Excel spreadsheet along with other factors

1 such as respondent culpability, extenuating
2 circumstances, the type of hazardous material, the
3 amount of hazardous material, all of those have
4 numerical values which comes down to simple math.
5 You put it in a spreadsheet and at the bottom of the
6 column it comes up with a number and that is the
7 amount of the civil forfeiture.

8 Q. Thank you.

9 This is the procedure that you use for
10 all hazardous materials violations; is that correct?

11 A. That is correct.

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

13 EXAMINER SHEETS: You may.

14 Q. Mr. Canty, I've handed you a multi-page
15 document that I've marked for purposes of
16 identification as Staff Exhibit No. 5. Do you
17 recognize this document?

18 A. Yes.

19 Q. You indicated that you assign points to
20 the different violations; is that correct?

21 A. Yes.

22 Q. And is this the document that determines
23 what points are assigned for the various violations?

24 A. Yes, it is.

25 Q. Can you tell me based on the violation

1 found by Inspector Rumas what points are associated
2 based on this document?

3 A. On the second page under Hazardous
4 Communications, shipping paper, it would be a point
5 about, oh, a couple of paragraphs from the top, a
6 3-point violation for a shipping paper violation.

7 Q. Is it the Shipping paper/ER information
8 not accessible? Is that the reference?

9 A. Yes.

10 Q. Thank you, sir.

11 Now, can you tell me where these points
12 come from? How these points are determined.

13 A. These points were the result of many
14 hours of discussion among staff with input from the
15 industry many years ago when we initially started to
16 assess hazardous materials violations back in 1988 I
17 believe it was, and over the years we occasionally
18 update the chart.

19 For instance, this one on the fourth page
20 at the bottom of the fourth page it says effective
21 October 1st, 2008. So this chart has been updated
22 approximately every two years just to account for
23 things that may change in the Federal Motor Carrier
24 violations, but it has remained pretty much the same
25 for the past 25 years I guess that's been.

1 Q. Are there nationally recognized standards
2 or procedures for making these determinations?

3 A. Yes. There is the CVSA, Commercial
4 Vehicle Safety Alliance, which is a national
5 organization which sets standards for assessing
6 violations. We follow those recommendations of CVSA
7 and we are consistent with what the recommendations
8 are.

9 Q. Just so I'm clear, these points, they are
10 consistent with their recommendations?

11 A. Yes.

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

13 EXAMINER SHEETS: You may.

14 Q. Mr. Canty, I've handed you a one-page
15 document marked for purposes of identification as
16 Staff Exhibit No. 6 entitled "Forfeiture Assessment".
17 Do you recognize this document?

18 A. Yes.

19 Q. You indicated earlier that you placed
20 this 3-point value that you described for us and a
21 variety of other factors into an Excel spreadsheet.
22 Does this assessment represent that Excel
23 spreadsheet?

24 A. Yes, it does.

25 Q. And can you briefly explain for us how

1 that works in general and, specifically, how
2 forfeiture was determined for the violation in this
3 case based on Staff Exhibit No. 6?

4 A. Yes. In this, on Staff Exhibit No. 6,
5 the first column there lists the violation that was
6 cited during the inspection, 177.817(e), shipping
7 paper accessibility. Again, if you turn to the
8 second page, it's several paragraphs down, 3-point
9 violation, shipping paper accessibility. That is a
10 3-point violation so that goes into that box right
11 there. That's how we come up with the value of 3.

12 Moving down the column there, Extent of
13 Violation, Actual Harm, and Other Circumstances, all
14 of those are normally 3 unless there's some
15 aggravating circumstances such as a spill, other
16 things, harm that's caused, environmental damage,
17 things like that. In this case there was none of
18 that so all those values are zero.

19 So the next row in the column, actually
20 that row is labeled (A), Subtotal of Points, that
21 value remains at 3.

22 The next row down is labeled (B),
23 Material Hazard, that is taken from the
24 second-to-last page of our chart, and the value there
25 that's entered on the spreadsheet is .8. That is

arrived at because the material, I don't have the inspection report in front of me, but the value for the type of material is 1.1, however, because it is a Packing Group III, if you look under Point Modifiers, it says minus .3. So 1.1 minus .3 comes up with .8. So that's how you get a .8 in that value.

The next row in the column which is marked (C), Amount of Material, if you turn to the last page, it is .2. Again, I don't have the inspection report in front of me, but apparently the amount of the material would be less than a thousand pounds and so the point value entered in the spreadsheet here is .2.

So then the next row down, row (D), is Subtotal of Points, and it says what the math is there. It's B plus C times A. Obviously, B and C added together is 1, and so 3 times 1 is 1 [verbatim], so the value there is 3. The respondent culpability, that is always a 1 unless, once again, are there some aggravating circumstances, which there was nothing out of the ordinary in this inspection.

The next row down is labeled (F), Respondent History, there is a value of 2. That can be either a 1, 2, or 4, depending on the respondent's history. I did not check, I did not independently

1 check what the respondent's history was back on
2 September 13th of 2010 when this was assessed, but
3 it was -- the value entered here is 2 which, briefly,
4 means that the respondent has a history of violations
5 that is a bit higher than the average carrier.

6 An average carrier would be a 1. A 1
7 would not have any effect on the point value. A 2
8 would -- it's a multiplier, so that would multiply
9 that value of 3 times 2. Obviously, if the
10 respondent history was worse, if it was a 4, it would
11 be 4 times 3, so that would raise the value higher.

12 In this case the respondent history was
13 2, 2 times 3, the previous value, comes up with 6,
14 and that is the value entered in row (G), the Total
15 Points. It says there D times E times F equals row
16 (G), which is the value of 6.

17 And then the final row at the very
18 bottom, Forfeiture Assessed Amount is G, the value in
19 (G), times \$100, 6 times \$100 is \$600.

20 Q. Now, Mr. Canty, you indicated that you
21 didn't specifically check this carrier's history, you
22 accepted the value of 2 that was put into this table.
23 What kind of violations would contribute to a history
24 factor of 2 versus a history factor of 1? Would it
25 be any violation at all?

1 A. No. It is only hazardous materials
2 violations that are cited against the carrier in the
3 state of Ohio.

4 Q. In your opinion, Mr. Canty, was the
5 forfeiture amount accurately calculated in this case?

6 A. Yes.

7 Q. And, in your opinion, is the forfeiture
8 amount reasonable?

9 A. Yes.

10 Q. Is the carrier, then, notified of the
11 Commission's determination --

12 A. Yes.

13 Q. -- or of the Commission staff's
14 determination?

15 A. Yes, it is.

16 Q. And how is that done, please?

17 A. Initially, a notice of intent to assess
18 forfeiture is sent to the carrier, at that point they
19 may either pay the civil forfeiture or they may
20 request a conference. If they request a conference,
21 as they did in this case, a conference is held.
22 Following the completion of that conference a notice
23 of preliminary determination is mailed out to the
24 respondent. That notice then informs the respondent
25 whether we are going to maintain the forfeiture at

1 the set amount or modify that amount.

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

3 EXAMINER SHEETS: You may.

4 Q. Mr. Canty, I've handed you two documents,
5 a single-page document marked for purposes of
6 identification as Staff Exhibit No. 7 and a two-page
7 document marked for purposes of identification as
8 Staff Exhibit No. 8. Can you identify these
9 documents for us, please.

10 A. Yes. Staff Exhibit No. 7 is the notice
11 of apparent violation and intent to assess
12 forfeiture, it's dated September 15th, 2010, and
13 addressed to D&J Transportation. It references the
14 inspection that was conducted on September 3rd of
15 2010 and, as I said before, informs the carrier that
16 we intend to assess D&J Company \$600, they may either
17 pay that amount or request a conference.

18 As I said before, they did request a
19 conference. A conference was held. As a result of
20 that Staff Exhibit 8 is our notice of preliminary
21 determination in the same case addressed to the same
22 company. This is dated November 22, 2010, it
23 references that a conference was conducted. As a
24 result of the conference we still intend to assess
25 the company the original amount assessed, \$600. The

1 company may either pay that amount or request an
2 administrative hearing.

3 Q. And are these documents part of the
4 Commission file in this case that you reviewed
5 preparing for your testimony today?

6 A. Yes.

7 Q. And, Mr. Canty, in your opinion, was the
8 respondent properly served with all required notices
9 in this case?

10 A. Yes.

11 MR. MARGARD: Your Honor, I have no
12 further questions for Mr. Canty. Thank you.

13 EXAMINER SHEETS: Do you have any
14 questions?

15 MR. THACKER: Just a couple small ones.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Thacker:

19 Q. Your name again?

20 A. John Canty.

21 Q. John. Hey, John, you come up with the
22 very last page of your thing. Did you not state that
23 it had less than a thousand pounds on your very last
24 page?

25 MR. MARGARD: Are you referring to Staff

1 Exhibit 5?

2 MR. THACKER: The one you just presented.

3 EXAMINER SHEETS: Which document are you
4 referring to?

5 MR. THACKER: No. 5, yes, sir.

6 A. Staff Exhibit 5, okay.

7 Q. Yes.

8 A. Gotcha. I don't have the inspection
9 report in front of me. The way it is normally
10 assessed, the way it should be assessed, is you would
11 look at the inspection report and see how much
12 product, how much material, was on the vehicle, the
13 weight of the product. You would refer to the chart
14 here. And since I don't have the inspection report
15 in front of me I'm assuming that the amount was less
16 than a thousand pounds or was a residue because the
17 value that was entered here is .2.

18 MR. MARGARD: Your Honor, may I provide
19 the report to the witness?

20 EXAMINER SHEETS: Excuse me?

21 MR. MARGARD: May I provide the
22 inspection report to the witness?

23 EXAMINER SHEETS: You may.

24 MR. MARGARD: I just thought it might
25 help.

1 A. It does help. I know there's not a
2 question on the table, but I'll answer it anyway. In
3 looking at Staff Exhibit 1, gross weight says
4 "Residue." So that, on the last page of Staff
5 Exhibit 5, residue, the point value is .2. So that
6 is where that came from. I had looked at Staff
7 Exhibit 1 a couple days ago but honestly did not
8 recall what the weight was.

9 Q. I'm going to use your bill of lading.

10 MR. THACKER: Is that fair enough?

11 EXAMINER SHEETS: Okay.

12 Q. That's the only thing considered this
13 officer needs to see, is that residue or is that
14 gallons? I mean, I understand I'm getting by cheaper
15 by saying residue, but . . .

16 A. This, well, it doesn't have a Staff
17 exhibit on it, but this is a loading ticket/bill of
18 lading for I assume the vehicle in question on the
19 date in question, and it does indicate that there was
20 product on the cargo tank at the time.

21 EXAMINER SHEETS: We're looking at
22 another inspection?

23 MR. THACKER: No. This is his. This is
24 Mr. Rumas's inspection. This is the load that was on
25 the truck, supposedly, at the time.

1 THE WITNESS: What I'm looking at, your
2 Honor, it says Marathon Oil Company, LLC, Bill of
3 Lading.

4 MR. MARGARD: If I can just take a look
5 at it very quickly just to make sure.

6 EXAMINER SHEETS: Let's identify it for
7 the record.

8 MR. MARGARD: Yes, your Honor. That
9 appears to be Staff Exhibit No. 4.

10 MR. THACKER: Yes, Exhibit No. 4. I'm
11 sorry, your Honor.

12 Q. (By Mr. Thacker) Based on that
13 information how would there be a residue in it
14 without the knowledge of Staff Exhibit No. 3?

15 A. At the time of the assessment, which is
16 indicated -- I'm sorry, the date of the assessment of
17 this violation, which is indicated on Staff Exhibit
18 6, date assessed September 13th, 2010, the date of
19 that assessment, I don't believe that the compliance
20 officer who assessed this had either of these
21 exhibits in front of him and would have gone strictly
22 on Staff Exhibit 1 which says "Gross weight residue."
23 Does that answer your question, sir?

24 Q. Yes, it does.

25 So if the driver was dead, say this was a

1 rollover, then we would have to assume that the tank
2 had the 8,500 gallons, correct?

3 A. A lot of assumptions in there, but I'll
4 go with you on that, yes.

5 Q. Okay. Safety rating; that is what you
6 was assessing as a number 2? That would have been on
7 your second page or --

8 A. That's not the safety rating. That's
9 called the history factor.

10 Q. Okay.

11 A. That's something that we maintain
12 internally here. That's independent --

13 Q. Has that changed since then?

14 A. I don't know.

15 Q. Okay. I do.

16 MR. THACKER: No further questions.

17 EXAMINER SHEETS: Do you have any
18 questions?

19 MR. MARGARD: Can I follow up, yes, just
20 briefly, your Honor.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Margard:

24 Q. With respect to the amount of material,
25 if, in fact, there had been 8,000 gallons on board

1 and the characterization of residue was in error,
2 would the forfeiture in this case be more or less?

3 A. It would have been significantly higher,
4 yes.

5 Q. Okay. Thank you.

6 So any error in this instance would work
7 to the respondent's favor, correct?

8 A. Yes, it would.

9 Q. What's the difference between a Packing
10 Group II and a Packing Group III?

11 A. A Packing Group II, let me get this
12 right, I believe the Packing Group II is -- there's
13 Packing Group I, II, and III, and I believe that a I,
14 II, and III indicates the level of the hazard, and
15 the hazard decreases as the number decreases.

16 Q. As the number decreases?

17 A. As the number decreases. I believe that
18 a Packing Group I has a higher risk factor than a
19 Packing Group II or a Packing Group III. I believe
20 that a Packing Group III is the lowest of the risk
21 factors.

22 Q. And if I ask you to refer to Staff
23 Exhibit 5, page 5 where the point modifiers are
24 indicated there, PGI, II, and III at the bottom of
25 the page --

1 A. Yes.

2 Q. -- that would indicate that the Packing
3 Group I would carry a higher point modifier than a
4 Packing Group II, which would then carry a higher
5 point modifier than Packing Group III; is that
6 correct?

7 A. That is correct. And I may have
8 misstated my testimony. It was a Packing Group II.
9 In looking at the inspection report that I now have
10 in front of me, it is a Packing Group III and that is
11 the modifier of the minus .3.

12 Q. And, I'm sorry, you got the Packing Group
13 II from where, please?

14 A. That is on Staff Exhibit 1, close to the
15 bottom, Locally Defined Fields, there's a box that
16 has a lot of data in that. Let's see, it would be
17 the second line, about the -- well, almost all the
18 way to the right of the second line, Packing Group A,
19 then it has Roman numeral III there, so that's
20 Packing Group III.

21 Q. Do you still have the document that
22 Mr. Thacker had handed to you which we identified as
23 Staff Exhibit No. 4?

24 A. The bill of lading?

25 Q. Yes, sir.

1 A. Yes.

2 Q. Do you see any notation of the packing
3 group on that document?

4 A. No.

5 Q. Mr. Canty, let me direct your attention,
6 if I may, to --

7 A. I'm sorry. It's faint, but I do see it
8 now.

9 Q. And what does that document indicate?

10 A. PGII.

11 Q. PGII. And just for purposes of
12 clarification, had this been calculated as a Packing
13 Group II violation as opposed to a Packing Group
14 III violation, the amount of the violation would be
15 greater; is that correct?

16 A. That is correct.

17 Q. Once again, any error in the calculation
18 of the forfeiture of this case would inure to the
19 benefit of the respondent; is that right?

20 A. That's correct.

21 MR. MARGARD: I have no further questions
22 for, Mr. Canty.

23 Thank you, your Honor.

24 EXAMINER SHEETS: Do you have any on
25 recross?

1 MR. THACKER: No.

2 EXAMINER SHEETS: You're excused.

3 (Witness excused.)

4 MR. MARGARD: Your Honor, I have no
5 further witnesses and I would respectfully move for
6 the admission of Staff Exhibits No. 1 through 8 in
7 this case.

8 EXAMINER SHEETS: I'll admit those
9 exhibits into evidence at this time.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER SHEETS: Now, would you like to
12 present any testimony?

13 MR. THACKER: Your Honor, the only
14 testimony I could present would be myself.

15 EXAMINER SHEETS: I'm sorry?

16 MR. THACKER: Myself.

17 EXAMINER SHEETS: Yes. Do you want to
18 testify?

19 MR. THACKER: I can. You said I would
20 have the opportunity to -- what, do I need to testify
21 or do I need to wait till it's over?

22 EXAMINER SHEETS: You can present a
23 narrative testimony if you wish.

24 MR. THACKER: Just a narrative testimony?

25 EXAMINER SHEETS: Raise your right hand.

1 (Witness sworn.)

2 EXAMINER SHEETS: Speak up for the court
3 reporter.

4 MR. THACKER: Okay. Mr. Rumas, I
5 appreciate --

6 EXAMINER SHEETS: Go ahead and present
7 your story.

8 - - -

9 JAMES THACKER

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

12 DIRECT TESTIMONY

13 MR. THACKER: My story is I'm the owner
14 of D&J Transport, or one of the partial owners of D&J
15 Transport. It is my responsibility to see to it that
16 these trucks have the correct information and they
17 have the correct paperwork, the correct documents,
18 that they can perform their duties safely.

19 I personally make up all these folders
20 and I put them in the trucks. Each day a driver's
21 given this folder with his load information and when
22 he delivers the load or hauls the load, it goes in
23 this paperwork, which each driver has their own
24 particular file, and it does say "HM Shipping
25 Papers."

1 Given the fact that I have worked with
2 the police departments, the PUCO, just about every
3 local agency there is, I'm part of Sandy's Towing,
4 part of a cleanup crew that actually goes to an
5 accident when there's a rollover, I've had three of
6 my own in 31 years, I do all Prescott Tank Lines,
7 Lykins Oil, if I'm looking for the shipping papers,
8 I'm going to go to that driver seat or the passenger
9 door.

10 If a truck's rolled over on its side, the
11 windows are knocked out of it, they may not be found.
12 And if they are found, they possibly could be wet and
13 wouldn't be able to read them. So that's the
14 predominant reason for putting them in something
15 plastic is to protect the paperwork.

16 The officer's right in the regards that
17 the bill of lading from Texas Eastern Pipeline was
18 underneath the delivery bill, but it was my
19 understanding under the PUCO that we're to help the
20 public, help the firemen, help anybody in charge.

21 By the last gentleman's testimony, he
22 knew the truck only had residue in it. If I showed
23 up on a job scene and the only thing I went by was
24 that bill of lading, I would have to assume that
25 truck was loaded, therefore, many agencies would have

1 to be called in to do a cleanup. A loaded truck is
2 more dangerous than an empty truck. If it leaks, it
3 can affect people miles away downstream, creeks,
4 rivers, then the area of responsibility grows larger
5 than where it's at.

6 My job is to protect the community as the
7 owner of this company, and that's the reason I choose
8 to make a delivery bill. And I choose to let
9 officers and officials and PUCO people and HazMat
10 people know that that truck is either loaded or
11 empty, that it could have lost 5,000 gallons like the
12 United Dairy Farmers just did on Route 75, and I was
13 a part of that cleanup crew and the drilling of the
14 tank.

15 They will not sit a loaded tank, they
16 will not even sit 500 gallons back up on its wheels
17 until it's empty. So I'm a part of the drilling
18 crew, I'm a part of the HazMat crew that goes and
19 drills it, and the biggest thing I need to know is
20 what's in each compartment. You can't knock on a
21 tank and tell if it's loaded or empty; I'm sorry.
22 You can't open a lid, because it's on its side, if
23 the compartment's full, it's going to run out on the
24 ground.

25 I have to know what's in each

1 compartment. I guess we're guilty of what the
2 officer says, but if it is, it's stupid that it's
3 that way. It just doesn't make good sense to me, I'm
4 sorry.

5 Because as far as the shipping papers,
6 they are marked "HM Shipping Papers." I think
7 anybody with any common sense at all can reach up in
8 the truck, grab the paperwork, and figure it out; it
9 wouldn't take them but half a second. And I think
10 that's what happened.

11 The driver handed the officer the
12 paperwork. The officer refutedly argued with me that
13 he's dead, but he's not dead, and if he was dead,
14 this is the best thing to have it in and the best way
15 to keep it in the truck, whether it be in the door,
16 as long as it's in something that will protect it,
17 and if the law don't see it that way, then I feel
18 sorry for them. That's it.

19 EXAMINER SHEETS: Does that complete your
20 testimony? Excuse me. Wait a second.

21 Do you have any questions?

22 MR. MARGARD: I do not. I thank you,
23 sir.

24 EXAMINER SHEETS: You're excused.

25 (Witness excused.)

1 EXAMINER SHEETS: Any further matters to
2 take care of today?

3 MR. MARGARD: None, your Honor.

4 EXAMINER SHEETS: Very well. I thank you
5 all for coming. I'll consider this matter submitted
6 on the record.

7 (The hearing concluded at 11:07 a.m.)

8 - - -

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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, April 21, 2011, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3831)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/5/2011 1:30:02 PM

in

Case No(s). 10-2968-TR-CVF

Summary: Transcript Transcript of D&J Transport Co. hearing held on 04/21/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.