

1           BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2                               - - -

3       In the Matter of the               :  
4       Request of Douglas               : Case No. 11-542-TR-CVF  
5       Daniels for an                   :  
6       Administrative Hearing           :

7                               - - -

8                               PROCEEDINGS

9       before Ms. Mandy Wiley and Mr. Scott Farkas, Hearing  
10      Examiners, at the Public Utilities Commission of  
11      Ohio, 180 East Broad Street, Room 11-D, Columbus,  
12      Ohio, called at 10:00 a.m. on Tuesday, May 3, 2011.

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

Mr. Douglas L. Daniels  
 19488 Fred-Amity Road  
 Fredericktown, Ohio 43019

Pro se.

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Tuesday Morning Session,  
May 3, 2011.

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(EXHIBITS MARKED FOR IDENTIFICATION.)

EXAMINER WILEY: Let's go ahead and go on the record. The Public Utilities Commission of Ohio has assigned for hearing at this time and place case number 11-542-TR-CVF being In the Matter of the Request of Douglas Daniels for an Administrative Hearing. I'm Mandy Wiley, and with me is Scott Farkas, and we are the attorney examiners assigned by the Commission to hear this case.

I'd like to begin by taking appearances of the parties beginning with Staff.

MR. JONES: Yes. Good morning, your Honor. On behalf of Staff of the Public Utilities Commission of Ohio, Ohio Attorney General Mike DeWine, Assistant Attorney General John Jones, 180 East Broad Street, Columbus, Ohio.

EXAMINER WILEY: Thank you.

Mr. Daniels, please state your name and your address.

MR. DANIELS: Yes, your Honor. I'm Doug Daniels, 19488 Fred-Amity Road, Fredericktown, Ohio, 43019.

1 EXAMINER WILEY: Thank you. Just to  
2 clarify on the record, Mr. Daniels, you are aware you  
3 could be represented by counsel today if you choose,  
4 but you are choosing to proceed without counsel; is  
5 that correct?

6 MR. DANIELS: Judging by the severity  
7 these guys think this is, do I need counsel?

8 EXAMINER WILEY: Let's go off the record  
9 for a moment.

10 (Discussion off the record.)

11 EXAMINER WILEY: Mr. Daniels, you are  
12 aware that you could be represented by counsel today  
13 if you choose, but you are choosing to proceed  
14 without counsel; is that correct?

15 MR. DANIELS: Correct.

16 EXAMINER WILEY: Thank you.

17 MR. DANIELS: My fingers crossed.

18 EXAMINER WILEY: Are there any procedural  
19 matters before we begin?

20 MR. JONES: No, your Honor.

21 EXAMINER WILEY: Great. Mr. Jones, you  
22 may proceed.

23 MR. JONES: Thank you, your Honor. The  
24 Staff would call Officer Rammel to the stand.

25 EXAMINER WILEY: Please raise your right

1 hand.

2 (Witness sworn.)

3 EXAMINER WILEY: Thank you. You may be  
4 seated.

5 - - -

6 JOHN T. RAMMEL

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

9 DIRECT EXAMINATION

10 By Mr. Jones:

11 Q. Please state your name for the record,  
12 please.

13 A. First name is John, last name is Rammel.

14 Q. And where are you employed?

15 A. At the Ohio State Highway Patrol Motor  
16 Carrier division. My post is the Wapakoneta post.

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

19 A. I inspect commercial motor vehicles for  
20 defects and drivers license and that sort of thing.

21 Q. And how long have you been in that  
22 position?

23 A. Since December of 2003.

24 Q. What training and qualifications do you  
25 have to do your job?

1           A.    I had to go through motor carrier classes  
2    which was a two-week class which was put on here in  
3    Columbus in December of 2003, and I've had HazMat  
4    training for all the different HazMat jurisdictions  
5    within our abilities to inspect trucks.

6           Q.    And you've been trained on how to enforce  
7    the Federal Motor Carrier Safety Regulations?

8           A.    Yes, sir.

9           Q.    And where are you assigned for your post?

10          A.    It's in Auglaize County in west central  
11   Ohio.

12          Q.    And what's your jurisdiction?

13          A.    Our jurisdiction is throughout the state.  
14   I can do inspections anywhere in the state.  
15   Predominantly we are assigned a district. My  
16   district encompasses Auglaize County.

17          Q.    What equipment is issued to you for  
18   performing your job?

19          A.    I have a patrol vehicle, a computer in  
20   that patrol vehicle that enables me to enter our  
21   inspection reports. I have a printer which enables  
22   us to print reports out for the driver, a computer  
23   card, air card in the computer which enables us to  
24   upload our computers to PUCO and the Federal Motor  
25   Carrier Association. I have a camera to take

1 pictures of whatever I need to take pictures of, a  
2 creeper which enables me to go under the truck and  
3 check the brakes, all the equipment to check brakes  
4 also.

5 Q. And I see that you're in a uniform today.  
6 Is this a uniform that's issued to you to perform  
7 your duties?

8 A. Yes, sir. Issued to us by the state.

9 Q. And why don't you describe a typical  
10 inspection that you do and what's generated from that  
11 inspection.

12 A. A typical inspection, Level 1 inspection,  
13 begins by contact with the driver, which we get the  
14 drivers license, the medical card, a logbook if a  
15 logbook is required, shipping bills. From there,  
16 then, we go on to check the lights and the tires.  
17 After that is completed, then we have the driver  
18 release the brakes after the wheels are chocked on  
19 the truck and we slide under the truck with a creeper  
20 to check the brakes and springs and steering  
21 mechanism on the truck then.

22 Q. And are there any reports that are  
23 generated from --

24 A. Yes.

25 Q. -- each inspection you do?



1           A.    Once I complete that part of the  
2   inspection, then I'll go back to my vehicle and I'll  
3   actually type up a report which includes the driver  
4   information, the carrier information, and any  
5   violations that I detected during the inspection.

6           Q.    And who all are served a copy of that  
7   report?

8           A.    At the time of the inspection the driver  
9   is served a copy of the report, which he is explained  
10   to at that time he has to turn it in to his local  
11   boss at which time the boss has to sign off on the  
12   report and mail it back or fax it back to the Public  
13   Utilities Commission within 15 days.

14          Q.    And do you also serve the report on any  
15   state agencies?

16          A.    By uploading the computer we upload it to  
17   PUCO and to the Federal Motor Carrier Association  
18   through the computer.

19          Q.    Electronically?

20          A.    Electronically, yes, sir.

21          Q.    And how soon is that done after an  
22   inspection in the field?

23          A.    Within one day of the inspection  
24   normally. From myself, I upload it as soon as I'm  
25   done with the inspection.

1           Q.    I have a report that's in front of you  
2           that's marked as Staff Exhibit 1.  Could you please  
3           identify that report for the record, please.

4           A.    That's the report I generated on the day  
5           in question for Mr. Daniels.

6           Q.    And so this is one of the reports that  
7           you testified that you would generate in the normal  
8           course of duties in doing your job --

9           A.    Yes.

10          Q.    -- your inspections in the field?

11          A.    Yes, sir.

12          Q.    Okay.  Why don't you walk us through the  
13          report.  Let's start with the top of the report.  It  
14          looks like it has a report number; can you please  
15          tell us about that.

16          A.    That's a sequential number that's done  
17          by -- as soon as we generate a report, as soon as we  
18          start a report, that's a number that's automatically  
19          assigned to that report.  They're sequential.  So  
20          this was the 7,525th report that I've done since  
21          I've been with the patrol.

22          Q.    And next I see other information recorded  
23          as to an inspection date.

24          A.    The inspection date is the day that I did  
25          the inspection.  Right below that is when I started

1 the inspection, which was 8:57 in the morning, and  
2 the time that the inspection was concluded, which was  
3 10:29 that same morning. The level of inspection was  
4 a Level 1, which is a full inspection, which I  
5 inspect lights, tires, and brakes at that point. The  
6 next caption below that says there was no HazMat in  
7 that inspection.

8 Q. Okay. And then the next field looks like  
9 it describes information pertaining to the driver?

10 A. Yes. The information over on the far  
11 left of the report is the actual carrier's  
12 information. That would be who the gentleman works  
13 for, Doug Daniels, and then it gives his address and  
14 his phone number. On the right side is the driver  
15 information, which also lists him as the driver, his  
16 Ohio operating license number, and his birth date.

17 Q. And where did you get this information  
18 from for your report?

19 A. That is part of -- in our computer system  
20 we can access to make sure that the driver is a valid  
21 driver, but I got most of the information off of his  
22 drivers license which I obtained from him at the  
23 start of the inspection.

24 Q. And Mr. Daniels that you got information  
25 from the drivers license, is he here in the courtroom

1 today?

2 A. Yes. That's him sitting over there.

3 MR. JONES: Your Honor, could the record  
4 reflect that the witness has identified Mr. Daniels  
5 as Respondent in this case?

6 EXAMINER WILEY: It will so reflect.

7 MR. JONES: Thank you.

8 Q. Okay. The next area of information,  
9 could you please walk us through that, please.

10 A. That's the actual location that I did the  
11 inspection. I did it along the roadside, U.S. 33,  
12 Milepost 8 in Auglaize County, and this particular  
13 location is a rest area.

14 Q. And do you have other information there  
15 as well as to origin?

16 A. Where the load originated at or where he  
17 picked up whatever he had in the back of the truck, I  
18 obtained that from the driver. He said he picked it  
19 up in Berne, Indiana, and that he was taking it back  
20 to Fredericktown, Ohio.

21 Q. Now, could you please describe this area  
22 where you did the inspection there in Auglaize  
23 County, U.S. 33? How close are you to the state line  
24 of Indiana?

25 A. We're approximately -- that location is

1 approximately 26 miles from the state line.

2 Q. And further, how far then would Berne,  
3 Indiana, be from the line?

4 A. Approximately 15 miles into Indiana.

5 Q. And the next field of information, what's  
6 there?

7 A. It's the vehicle identification  
8 information, and that's obtained either from the  
9 registration, which the driver normally gives us, or,  
10 if the driver does not have a registration, once  
11 again, we can run the license plate through LEADS,  
12 which is a computer program on our computer, to get  
13 the vehicle information. From that we usually match  
14 the information from the computer to the information  
15 that's on the truck.

16 Q. Okay. And now the next field?

17 A. That's the actual brake measurements on  
18 the truck itself. I actually slid underneath the  
19 truck, marked the brakes, and then measured the slack  
20 adjusters to see how far they traveled. Those were  
21 the actual measurements from that truck.

22 Q. Now, the next field on the first page of  
23 the report that contains a large box that is titled  
24 Violations, is there anything there that relates to  
25 operating a motor vehicle without a commercial

1 drivers license and without a medical certificate?

2 A. Right. Yes, sir, there is.

3 Q. Could you please walk us through those  
4 two violations?

5 A. Those two violations were written and  
6 that's how we type the violations in. This  
7 particular violation says "Operating a Commercial  
8 Motor Vehicle without a CDL," the driver had a class  
9 D drivers license when a class B is required. And  
10 then the second violation is no medical certificate  
11 in the driver's possession.

12 Q. Okay. And there's other information in  
13 between here beside the description. What else is  
14 there to the left of the description?

15 A. The actual section code through the  
16 federal regulation, like for the operating a  
17 commercial motor vehicle without a CDL, that's  
18 383.23(a)(2), that's a driver violation.

19 Q. And what's the information in between the  
20 section code and the description? What's that?

21 A. There's a Unit section, which that  
22 pertains to who the violation is associated with.  
23 That particular violation is associated with the  
24 driver.

25 The next column is an OOS, which is an

1 out of service, which means the driver did not have  
2 the correct license for the vehicle.

3 Level 6. It was not a Level 6 violation.

4 The next caption is Citation. If I would  
5 have asked a trooper to write a citation for a  
6 drivers license, I would have carried the citation  
7 number there. I did not have a trooper write a  
8 citation for that.

9 The Verify column is if a violation can  
10 be fixed there, then we can change that. The verify  
11 there says No, it cannot be fixed there. No, it was  
12 not fixed there. Or I could have changed it, if you  
13 would have had a correct drivers license, to an A,  
14 which means he fixed it there.

15 The last caption there, the violation is  
16 Crash. If this truck would have been involved in a  
17 crash, that caption allows us to put whether or not  
18 the violation was an occurrence of the crash or was  
19 caused by the crash. So if there would have been a  
20 vehicle violation, there would have been something  
21 wrong caused by the crash, that could be checked  
22 there.

23 Q. I see from your report that you had  
24 marked Yes for out of service for operating a  
25 commercial motor vehicle without a commercial drivers

1 license. What does that mean when you mark Yes for  
2 that column?

3 A. That he cannot drive that vehicle until  
4 he has a commercial drivers license or somebody else  
5 with a commercial drivers license has to drive it for  
6 him.

7 Q. Okay. Let's proceed down the report.  
8 Special Checks, anything there noted?

9 A. No. There was no special checks done at  
10 that time.

11 Q. And the next field, you have Inspection  
12 Notes, can you please read what you have in your  
13 inspection notes from your report?

14 A. That was taken at the time of my report.  
15 I put in there "Driver tried to claim farm exemption.  
16 Was hauling processed cheese from a processing plant  
17 back to a warehouse where it is to be labeled and/or  
18 cut to be sold later. Claimed hauled his milk, which  
19 was made into cheese - his cheese for him to sell at  
20 farmer's market. The cheese he had on now was milk  
21 that he had brought to Berne last week. Company  
22 markings on the truck were to Lanning Foods Mount  
23 Vernon, Ohio; 740-397-2251. They were contacted -  
24 spoke to a Steve, the truck was registered to the  
25 driver who is a contract carrier for Lanning's once



1 in a while, but is not -- but not at this time.  
 2 Neither company has a DOT number so credentials could  
 3 not be checked. Driver claimed to be a private  
 4 carrier."

5 Q. Okay. And then moving, then, from the  
 6 first page to the second page, what information is  
 7 contained on the second page of the report?

8 A. Once again, carrier information, and the  
 9 Ohio Public Utilities Commission information, my  
 10 report number, that information, also the driver  
 11 information, special study fields, and then the  
 12 locally defined fields.

13 Q. Okay. And as to the locally defined  
 14 fields, is there indication there as to the reason  
 15 for the inspection occurring in this case?

16 A. Yes. It's marked obvious, OBVI. That's  
 17 an obvious violation for me.

18 Q. Okay. And do you recall what the obvious  
 19 violation was for the inspection to occur?

20 A. At the time of the inspection he had a  
 21 front plate that was registered to one company and  
 22 the rear plate on the truck was registered to his, so  
 23 I stopped the truck to see who the actual registrant  
 24 was.

25 Q. Okay. And in the course of your

1 inspection did you happen to take pictures?

2 A. Yes, I did. I took pictures of the truck  
3 and the load.

4 Q. And as part of the packet of information  
5 before you would you please identify Staff Exhibit  
6 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, and 2I?

7 A. 2A is a picture of the front of the truck  
8 with the plate that I observed as it came into the  
9 rest area.

10 2B is the actual VIN plate on the truck  
11 that tells me what the gross vehicle weight of the  
12 truck is.

13 Q. Before you move on, let's stop here at 2B  
14 for a second. Could you please walk through the  
15 information that's shown from that picture based on  
16 the manufacturing information?

17 A. Right, that's manufacture information  
18 stamped in that plate that's on the truck. The top  
19 of it tells who the truck was manufactured by, the  
20 next line is the date of manufacture, the date the  
21 vehicle was manufactured, and the gross vehicle  
22 weight of the truck, which is marked 32,900, gross  
23 axle weight for the front of the truck, and then the  
24 gross axle weight for the rear of the truck.

25 Q. Okay. So the gross vehicle weight for

1 this vehicle is over 26,001 pounds and it's actually  
2 32,900; is that correct?

3 A. That's correct.

4 Q. You may proceed to the next picture.

5 A. 2C is the way the truck was marked,  
6 Lanning's Foods. That's on the side of the truck.

7 2D was just showing the door, that there  
8 was no markings on the door and a truck number.

9 2E is a milk tank that was in the back of  
10 the truck.

11 2F is another picture of a milk tank and  
12 some of the boxes that were on the rear of the truck.

13 2G is boxes of cheese which the driver  
14 stated he picked up in Berne and was taking back to  
15 Fredericktown.

16 2H is another picture closer up of the  
17 actual boxes of cheese.

18 2I is a picture of the rear of the truck  
19 which shows a different plate than what was on the  
20 front.

21 Q. And just for comparison purposes between  
22 Staff Exhibit 2A and Staff Exhibit 2I, would you  
23 please read the tag that's depicted in Staff Exhibit  
24 2A?

25 A. 2A is PFT 6961.

1           Q.    Now, would you also do the same for Staff  
2 Exhibit 2I?

3           A.    PGH 5896.

4           Q.    Okay. And the pictures that you took  
5 from the camera that was issued to you to do your  
6 job, being Staff Exhibits 2A through 2I, are these  
7 accurate representations of the depictions that day  
8 when you were doing your inspection?

9           A.    Yes, sir.

10          Q.    And you had these pictures developed?

11          A.    Yes, I did.

12          Q.    For purposes of this case?

13          A.    Yes. I have a copy of the pictures with  
14 me.

15          Q.    Let me ask you about your inspection  
16 report. After such time as you completed your  
17 inspection and you had generated Staff Exhibit 1,  
18 what did you next do with that report from your  
19 cruiser?

20          A.    I printed a copy out, gave it to  
21 Mr. Lanning -- or, Mr. Daniels, sorry about that,  
22 explained the violations to him, and I had him sign  
23 it and explained to him the violations -- or I  
24 explained the violations and then explained the back  
25 page, that if he was the official carrier, he had to

1 sign it and mail it back into the PUCO Commission  
2 with either faxing it or mailing it back in.

3 Q. Okay. And then where else did you send  
4 this report, Staff Exhibit 1?

5 A. Uploaded it to the PUCO and Federal Motor  
6 Carrier Association through my computer through an  
7 air card.

8 Q. And that was done on the date of the  
9 inspection which was August 25th, 2010?

10 A. Yes.

11 Q. And Staff Exhibit 1, that's an accurate  
12 representation of the report you prepared that day  
13 and submitted to the Commission?

14 A. Yes.

15 Q. Officer Rammel, you understand the  
16 defense that Mr. Daniels is asserting in this case  
17 saying that he is eligible for the farm exemption?  
18 Do you understand that?

19 A. Yes, I do.

20 Q. Are you familiar with the farm exemption  
21 as it's laid out in the Federal Motor Carrier Safety  
22 Regulations?

23 A. Yes, I am.

24 MR. JONES: Your Honor, if I may have a  
25 moment.

1 EXAMINER WILEY: Sure. Let's go off the  
2 record.

3 (Discussion off the record.)

4 EXAMINER WILEY: Let's go back on the  
5 record.

6 MR. JONES: Your Honor, at this time I'd  
7 like to approach the witness and have the witness  
8 read from the Federal Motor Carrier Safety  
9 Regulations.

10 EXAMINER WILEY: You may.

11 MR. JONES: Thank you.

12 Q. (By Mr. Jones) Officer Rammel, I'm  
13 handing you a copy of the Federal Motor Carrier  
14 Safety Regulations and I'm going to ask you to read  
15 from this provision 49 CFR section 383.3 as it  
16 concerns the farm exemptions listed there. Would you  
17 please read the subsection there, too. Identify the  
18 number.

19 A. Subsection (d), Exception for farmers,  
20 firefighters, emergency response vehicle drivers, and  
21 drivers removing snow and ice. A State may, at its  
22 discretion, exempt individuals identified in  
23 paragraph (d)(1), (d)(2), and (d)(3) of this section  
24 from the requirements of this part. The use of this  
25 waiver is limited to the driver's home State unless

1 there is a reciprocity agreement with adjoining  
2 States.

3 Subsection (i), operation -- Operators of  
4 a farm vehicle which are: Controlled and operated by  
5 a farmer, including operations by employees or family  
6 members; subsection (ii), Used to transport either  
7 agricultural products, farm machinery, farm supplies,  
8 or both to or from a farm; subsection (iii), Not used  
9 in operation of common or contract motor carrier; and  
10 subsection (iv), Used within 241 kilometers (150  
11 miles) of the farmer's farm.

12 Q. Officer Rammel, after reading from the  
13 provision in the Federal Motor Carrier Safety  
14 Regulations as to the farm exemption, why doesn't the  
15 farm exemption apply, in your opinion, to Mr. Daniels  
16 in this case?

17 A. He had processed cheese, which is no  
18 longer a farm commodity, it's a product that has been  
19 processed already, and he was taking it to another  
20 place to finish processing it. So my assumption at  
21 that point was that he was going from one processing  
22 plant to another processing plant.

23 Q. So this wasn't a situation where he was  
24 transporting milk from his farm somewhere. It was  
25 just the opposite. He was coming from somewhere,

1 from a plant that had already processed his milk into  
2 cheese; is that correct?

3 A. That's correct.

4 Q. And is that also supported by your  
5 pictures in this case?

6 A. Yes. Pictures 2F, 2G, and 2H all shows  
7 boxes of processed cheese in the rear of the truck.

8 Q. And in those pictures you're referring  
9 to, 2G and 2H, this depicts a box of cheese with  
10 labels on it?

11 A. That's correct. It's marked SwissLand  
12 Cheese Company out of Berne, Indiana. Also has their  
13 web page on it.

14 Q. At the time that you had done the  
15 inspection in this case Mr. Daniels was returning  
16 from Berne, Indiana --

17 A. That's correct.

18 Q. -- to the destination of Fredericktown,  
19 Ohio?

20 A. That's correct.

21 Q. And the information in your notes when  
22 you refer to "Was hauling processed cheese from  
23 processing plant back to warehouse where it is to be  
24 labeled and/or cut to be sold," is that information  
25 you got from Mr. Daniels?



1           A.    Yes.  Yes, I did.

2           Q.    And so with that being your opinion that  
3   the farm exemption does not apply in this case, is it  
4   also your opinion, then, that Mr. Daniels is in  
5   violation of not having a commercial drivers license  
6   for that vehicle for that inspection and also a  
7   medical certificate?

8           A.    That's correct.

9           Q.    In the records that you have produced  
10   today which have been made exhibits in this case,  
11   including your report and your pictures, are these  
12   records that are kept in the ordinary course of  
13   business for you to conduct your job?

14          A.    Yes.

15               MR. JONES:  Your Honor, I have no further  
16   questions.  I would like to move for the admission of  
17   those exhibits, Staff Exhibits 1 and 2A through I.

18               EXAMINER WILEY:  Mr. Daniels, do you have  
19   any objection to the admission of these exhibits?

20               MR. DANIELS:  No, your Honor.

21               EXAMINER WILEY:  Do you have any  
22   questions of this witness before we --

23               MR. DANIELS:  Yes, your Honor.

24               EXAMINER WILEY:  -- do exhibits?  All  
25   right.  You can proceed.

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CROSS-EXAMINATION

By Mr. Daniels:

Q. On Exhibit 1 on the Origin, where did that information come from?

A. I got that from you. I asked you where you were coming from, and you told me "Berne, Indiana."

MR. DANIELS: Let the record be corrected. The cheese was processed in Berne, Indiana. I meet the driver at the truck stop on 33 and --

MR. JONES: Object.

EXAMINER WILEY: At this point this is just a point that you can ask questions of this witness. You'll have your opportunity to testify and tell your side of the story after Staff has finished presenting its case.

MR. DANIELS: Okay.

EXAMINER WILEY: So at this point you just need to restrict yourself to asking the witness questions.

MR. DANIELS: Okay. Or do we just call him back up and put them all together then?

EXAMINER WILEY: I'm sorry. What was your question?

1 MR. DANIELS: Should we just call him  
2 back up and put it all together then or whatever?  
3 Okay. Just -- no problem.

4 EXAMINER WILEY: If you have any  
5 questions to ask of this witness, this is the time  
6 for you to ask those questions.

7 MR. DANIELS: That was the only question.

8 EXAMINER WILEY: No further questions?

9 Mr. Jones, do you have any redirect?

10 MR. JONES: No redirect, your Honor.

11 EXAMINER WILEY: Okay. Examiner Farkas?

12 EXAMINER FARKAS: Yes.

13 - - -

14 EXAMINATION

15 By Examiner Farkas:

16 Q. On the inspection report which says "Bill  
17 of Lading" --

18 A. Yes.

19 Q. -- can you explain what that is for the  
20 record?

21 A. A bill of lading is usually a piece of  
22 paper that tells you origin, destination, shipper  
23 information, what exactly is in the load, whether  
24 it's car parts or that type of information. It tells  
25 you the quantities usually, the weights, and that

1 kind of stuff.

2 Q. Okay. And during this inspection did you  
3 ask Mr. Daniels if he had a bill of lading?

4 A. Yes, I did.

5 Q. And he said?

6 A. Did not have one.

7 Q. Okay. So the information you obtained  
8 that is in your inspection notes you got directly  
9 from Mr. Daniels.

10 A. That's correct.

11 Q. And in terms of the cargo, you indicated  
12 Refrigerated Foods.

13 A. That's the caption that's available to us  
14 when I did the inspections, one of the captions  
15 that's available to us that is automatically put in  
16 there. I had to select that when I was going through  
17 and entering my report.

18 Q. Okay. Was that selection based on the  
19 vehicle that you --

20 A. Yes. That's correct.

21 Q. Can you describe what the vehicle looked  
22 like?

23 A. It was a straight truck with a  
24 refrigerated cargo box on it.

25 Q. Okay. You also indicated under the

1 Violations that he had a class D license, not a class  
2 B as required. Can you sort of expand on that? What  
3 is a class D versus class B?

4 A. Class D drivers license is a normal  
5 drivers license, you can drive a passenger car. A  
6 class B drivers license is required for a truck  
7 that's over 26,000 pounds not in combination.

8 Q. Okay. And, again, this vehicle was over  
9 26,000 pounds?

10 A. That's correct.

11 Q. Again, you stopped the vehicle because of  
12 the markings on the truck?

13 A. Different plate -- there was a --

14 Q. Plates.

15 A. The plate on the front was different from  
16 the plate on the rear.

17 Q. Okay. Did you happen to ask Mr. Daniels  
18 about that at all?

19 A. I don't recall if I did or not. I  
20 probably did, but I don't remember. I didn't write  
21 it as a violation that day.

22 Q. Okay. Do you recall how many boxes of  
23 material were in the back of the truck?

24 A. No, I don't. I don't recall. I didn't  
25 count them.

1           Q.    You indicated in the inspection report he  
2 was put out of service for three violations, one was  
3 the drivers license, one is brakes out of service,  
4 and one is defective brake warning device.

5           A.    Yes, sir.

6           Q.    Did he repair those while you were on  
7 site?

8           A.    I honestly can't remember if he did  
9 repair those.

10          Q.    While you were there.

11          A.    While I was there.

12          Q.    Okay. So you put him out of service,  
13 then, for some time, then you left.

14          A.    Yes.

15          Q.    Did you just put one of the  
16 out-of-service stickers on his truck?

17          A.    For those other violations below, yes.

18               EXAMINER FARKAS: That's all I have.

19               EXAMINER WILEY: I have no questions, so  
20 you may be excused. Thank you.

21               (Witness excused.)

22               EXAMINER WILEY: Let the record reflect  
23 that Staff has moved for the admission of several  
24 exhibits including Exhibit 1 and Exhibits 2A through  
25 2I, which are photographs, and Staff Exhibit 1 is the

1 examination report. Mr. Daniels, do you have any  
2 objections to the admission of these exhibits?

3 MR. DANIELS: No.

4 EXAMINER WILEY: Hearing no objection,  
5 these exhibits will be admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER WILEY: Mr. Jones, do you have  
8 any further witnesses?

9 MR. JONES: Yes, your Honor. Staff would  
10 like to call Tom Forbes to the stand, please.

11 EXAMINER WILEY: Please raise your right  
12 hand.

13 (Witness sworn.)

14 EXAMINER WILEY: Thank you. You may be  
15 seated.

16 Before we begin, Mr. Daniels, do you have  
17 any objections to the fine that is at issue here, the  
18 amount of the fine?

19 MR. DANIELS: One more time.

20 EXAMINER WILEY: Do you have any  
21 objection to the amount of the fine that was assessed  
22 against you?

23 MR. DANIELS: No.

24 EXAMINER FARKAS: So there's a -- you  
25 understand that there's a forfeiture that's been

1 assessed? If the Commission finds against you in  
2 this case, there's a civil forfeiture that the Staff  
3 is recommending, you understand that, correct?

4 MR. DANIELS: How bad?

5 (Discussion off the record.)

6 MR. DANIELS: Okay. He said -- I mean,  
7 it's the same, so yeah. I paid the fine for the  
8 brakes because I was wrong, you know.

9 EXAMINER FARKAS: \$350.

10 MR. DANIELS: Sure.

11 EXAMINER FARKAS: That's the civil  
12 forfeiture --

13 MR. DANIELS: I understand.

14 EXAMINER FARKAS: -- you understand that.

15 MR. DANIELS: No problem.

16 EXAMINER FARKAS: Do you have any -- are  
17 you willing to stipulate to that fine, assuming the  
18 Commission finds in favor of Staff and against you?

19 MR. DANIELS: What's that mean?

20 Translate that.

21 EXAMINER FARKAS: That means that you're  
22 accepting that the method of calculating the  
23 forfeiture and the recommendation --

24 MR. DANIELS: No problem.

25 EXAMINER FARKAS: -- of the Staff that



1 the forfeiture be \$350, you don't object to that.

2 MR. DANIELS: Correct.

3 EXAMINER FARKAS: Okay.

4 MR. DANIELS: I mean it, you know --

5 EXAMINER FARKAS: And you'll stipulate  
6 that for the record?

7 MR. DANIELS: Yeah. I mean, I, you  
8 know -- you know, yes.

9 EXAMINER FARKAS: Okay.

10 MR. JONES: I can put that stipulation on  
11 the record.

12 EXAMINER FARKAS: Okay. I think we have.

13 MR. JONES: We're on the record, okay.

14 EXAMINER FARKAS: Yeah, we're on the  
15 record.

16 MR. JONES: Yes, your Honor, seeing  
17 Mr. Daniels is willing to stipulate to the fact that  
18 the fine that was calculated by the Commission Staff  
19 was \$350 and that was properly calculated in  
20 accordance with the Commercial Vehicle Safety  
21 Alliance and the rules and procedures of the  
22 Commission, and if it is the finding of the  
23 Commission that the violations that Staff has alleged  
24 in this case are found to be actual violations in  
25 this case, Staff would ask that that amount, \$350, be

1 assessed against Mr. Daniels.

2 EXAMINER FARKAS: Okay.

3 MR. DANIELS: And the court understands I  
4 did pay the violation for the brakes and stuff  
5 because I was in the wrong. This I'm not in the  
6 wrong about. I was in the wrong with brakes. I paid  
7 the \$250 that was also assessed to me, and that's  
8 already been paid.

9 EXAMINER FARKAS: But you're agreeing on  
10 the record.

11 MR. DANIELS: Sure.

12 EXAMINER FARKAS: You're stipulating to  
13 this.

14 MR. DANIELS: Sure. I agree. It's not  
15 about the fines. It's just I'm a farmer. That's all  
16 it amounts to.

17 EXAMINER WILEY: You may be excused.  
18 Thank you.

19 Staff, does Staff have anything further?

20 MR. JONES: With that, your Honor, Staff  
21 has nothing further.

22 EXAMINER WILEY: Okay. Mr. Daniels, if  
23 you wish to present your case at this time. Would  
24 you like to testify?

25 MR. DANIELS: What was his purpose for?

1 MR. JONES: Just the calculation.

2 MR. DANIELS: Oh, he was -- okay.

3 EXAMINER FARKAS: His purpose was to  
4 testify how the fine was calculated and that was the  
5 fine that was recommended by the Staff. And seeing  
6 as you do not object to that --

7 MR. DANIELS: Sure.

8 EXAMINER FARKAS: -- his testimony is not  
9 necessary.

10 MR. DANIELS: That's not the issue.

11 EXAMINER WILEY: If you would like to  
12 testify at this point, you can come up here and I  
13 will swear you in, and please bring any documents  
14 with you that you'd like us to be aware of.

15 Please raise your right hand.

16 (Witness sworn.)

17 EXAMINER WILEY: Thank you. You may be  
18 seated.

19 - - -

20 DOUGLAS DANIELS  
21 being first duly sworn, as prescribed by law, was  
22 examined and testified as follows:

23 DIRECT TESTIMONY

24 MR. DANIELS: Do I have to do legalese or  
25 can I just tell you?

1 EXAMINER WILEY: This is your opportunity  
2 to tell your side of the story in your own words.

3 MR. DANIELS: Your Honor, I am a seventh  
4 generation farmer in Knox County and we milk cows.  
5 My dad was -- we've milked cows all my life. And I  
6 was commercial, just regular selling my milk down the  
7 drive in the '80s and '90s when I got home from  
8 school.

9 An opportunity came along to sell organic  
10 milk through a local processor for better money, and  
11 we started selling milk to them. And they  
12 overestimated their sales, and so they ended up --  
13 that market went away because they couldn't sell all  
14 our organic cheese.

15 So I started in 2001 to sell organic  
16 cheese from our farm. I have our milk made into  
17 cheese and then we take it around, it's packaged like  
18 this, and then take it around and sell it at the  
19 farmers markets mostly on Saturday morning right out  
20 in the middle of the street.

21 And I have Exhibit 1 which is, this is  
22 what allows me to sell the cheese. That's my  
23 vendor's license, or it's a mobile food license, but  
24 it allows --

25 EXAMINER WILEY: Let me interrupt you for

1 a moment. This is your food service operation  
2 license?

3 MR. DANIELS: Yeah. This is what -- this  
4 proves to you that I take this cheese and this is my  
5 legal allowance to take the cheese to -- I have to  
6 have the cheese packaged in an approved facility.  
7 And the gentleman asked me on the phone, and I wasn't  
8 fast enough on the thing, the answer to his question  
9 is what's the difference is the -- I retain ownership  
10 of the milk. I never sell the milk. I sell the  
11 cheese. That's how we raise the money for the farm.  
12 That's what moves that.

13 Even if you're going to say it's not a  
14 farm product, it's a farm supply from my farm because  
15 we use the cheese, that's how we generate the income.  
16 We don't sell the raw product. We sell the cheese  
17 product. But it is for my farm, and that's how we  
18 generate our revenue for our farm.

19 So even if it's not a -- if you don't --  
20 decide it's not a product, it's still a supply. So  
21 either way it's running, you know, the products for  
22 my farm.

23 And the Ohio Revised Code, which  
24 supersedes what he has on the thing, goes farther  
25 into explaining the exemption on the farm thing. And

1 it actually is a definition, it's Ohio Revised Code  
2 4506.01 and it's section (D) [verbatim].

3 And a farm truck means a truck controlled  
4 and operated by a farmer to use in transportation to  
5 and from farm, for a distance of no more than 150  
6 miles, of product of the farm, including livestock  
7 and its products, poultry and its products,  
8 floricultural and horticultural products, and in  
9 transportation to the farm, from a distance not more  
10 than 150 miles, for supplies of the farm including  
11 tiles, fence, and every other thing and commodity  
12 used in agricultural, floricultural, horticultural,  
13 livestock and poultry production, and livestock,  
14 poultry, and other animals and things used for  
15 breeding, feeding, and other purposes connected with  
16 the operation of the farm, when the truck is operated  
17 in accordance with this division and not used in the  
18 operation of a motor transportation company or  
19 private motor carrier.

20 And then the exemption says a person  
21 running that truck, which I was, and I wasn't hauling  
22 for anyone else, it was my product. There was no  
23 bill of lading because I hadn't bought the product.  
24 I was just -- we pay to have it processed. But we  
25 don't -- the milk retains -- I retain ownership of

1 the product until we take it to the farmers market  
2 and sell it. That's where our market is.

3 So we're -- it's either a supply or a  
4 product, it doesn't matter, either one is the same.  
5 So that's, you know, where I'm at.

6 - - -

7 EXAMINATION

8 By Examiner Wiley:

9 Q. I just have a couple of questions to ask  
10 you. What specific types of products were you  
11 transporting? Was that just the cheese?

12 A. That's all that was on the truck.

13 Q. Who loaded the shipment?

14 A. How we do is they, Berne SwissLand has --  
15 they do -- they're a milk producer, you know. That's  
16 what they do. To save time I actually meet their  
17 truck at the truck stop at 33 and 707. There's a  
18 truck stop right there, and that way it saves them  
19 complication, they bring me product and we just  
20 trade, and it works real well. It keeps me out of  
21 their hair and it saves me miles and works real good.

22 Q. Okay.

23 A. But, you know, the product's from Berne.

24 Q. Where specifically, then, did this  
25 shipment originate from? Is that from Berne?

1 A. Yes.

2 Q. And that's in Indiana.

3 A. But it was traded there at the truck stop  
4 from their truck to mine.

5 Q. Okay. What was the destination of the  
6 shipment?

7 A. I always go home first, but we use  
8 Lanning's for cold storage because you have to have  
9 this under an approved facility. The truck is  
10 refrigerated, but as long as we run diesel in it it's  
11 a refrigerated box, but it's an engine truck and so  
12 then --

13 Q. Where is Lanning's? Lanning's is in --

14 A. It's a local. It's 8 miles from home.  
15 It's a local. They do meat and produce. And then I  
16 rent their facility for storage, and then after hours  
17 I cut my cheese -- I make this at their place. It's  
18 a USDA inspected food processing facility.

19 Q. It's a food processing facility, okay.

20 A. That gives me the regulations I need to  
21 be able to sell this legally and have the cold  
22 storage and under licensed processing.

23 Q. Where specifically is that facility  
24 located?

25 A. It's 1033 Newark Road in Mount Vernon,



1 Ohio.

2 Q. Mount Vernon, okay.

3 A. Which is close to my -- it's 8 miles from  
4 my farm.

5 Q. So were you being paid to transport --

6 A. No.

7 Q. -- these products?

8 A. It's my -- it's either my milk or I  
9 actually also buy cheese from them when we're short  
10 of different flavors.

11 Q. Okay.

12 A. We get one type every time we make it, so  
13 then to have the variety I actually buy cheese from  
14 SwissLand also that we sell. And, again, it's a farm  
15 product.

16 - - -

17 EXAMINATION

18 By Examiner Farkas:

19 Q. Your Exhibit 1, the food service  
20 operators license, you obtained this from Knox County  
21 Health Department?

22 A. Health Department, right.

23 Q. Okay.

24 A. Yeah, I buy that from them.

25 Q. And this is a -- why did you get this

1 license?

2 A. This allows me to sell --

3 Q. No. Why did you apply for it?

4 A. I have to have this license to be able to  
5 take the cheese to the farmers markets. This allows  
6 me to sell my cheese to the public out of coolers --  
7 how it reads on the back, I can use -- we actually  
8 have this cheese in coolers on ice at the farmers  
9 market, it's up to four hours as long as I maintain  
10 it under 41.

11 Q. So this is a license that allows you to  
12 sell cheese --

13 A. To sell my cheese --

14 Q. -- out of your truck.

15 A. Well, to farmers markets.

16 Q. At farmers markets.

17 A. That's where we sell it at, right.

18 That's how we make money for our farm, we sell it  
19 directly to the customer.

20 Q. And is there anything in this license  
21 that talks about where you're going to be traveling  
22 to or from?

23 A. No.

24 Q. So this is strictly a license to sell the  
25 cheese.

1           A.    It just shows you, it verifies to you  
2   that I indeed take my farm product and sell it to the  
3   customer. This is how we raise the money for our  
4   farm. We take our cheese and we sell it right to the  
5   public --

6           Q.    Okay.

7           A.    -- is all that license verifies to you.

8           Q.    Okay.

9           A.    In other words, it's a product for my  
10  farm or a supply for my farm, whichever you want to  
11  call it.

12          Q.    Okay.

13          A.    But either one is exempt.

14          Q.    Now, at the time that you were inspected  
15  what was in your truck?

16          A.    An empty milk tank and cheese. The  
17  boxes -- as you see in the pictures in the exhibit,  
18  you'll see there's a picture that has more of a  
19  bigger view.

20          Q.    But they're boxes of cheese just like  
21  what you have.

22          A.    No. On these, how we get -- when they  
23  make the cheese, it's a 40-pound block. This whole  
24  thing is just one big chunk. Inside that box is one  
25  big chunk of cheese.

1 Q. Okay.

2 A. And then we store that in the cold  
3 storage at Lanning's, and then when we need it, which  
4 is usually Thursday night or Friday night, and we  
5 take it out and cut it to go to the farmer market on  
6 Saturday.

7 Q. So when you were stopped, you had a box  
8 of chunks of cheese.

9 A. We had big chunks of cheese in the back  
10 of the truck.

11 Q. And the cheese wasn't in plastic.

12 A. Inside those boxes there's plastic. I  
13 mean, you know, there's -- inside the cardboard box  
14 is a, it's 14 by 7 by 11, 40 pound in shrink wrap,  
15 you know, a bag inside that box. It keeps it from  
16 molding, you know.

17 Q. But you're not selling to the public that  
18 size.

19 A. No.

20 Q. Okay. Now, and that's what you were  
21 transporting at the time?

22 A. That's what I was transporting, yeah.

23 Q. And that was coming from Berne --

24 A. From SwissLand Cheese, yes, Berne,  
25 Indiana.

1 Q. What's SwissLand Cheese?

2 A. That's the name of the cheese processor  
3 that makes my milk into cheese.

4 Q. Okay.

5 A. On the box, you'll see there on some of  
6 the boxes it says "SwissLand." See that one right  
7 there?

8 Q. So when you first start, I want to sort  
9 of get from when you -- what are you taking first  
10 from your farm? What product do you have at the  
11 farm?

12 A. As you'll see in Exhibit -- I'm sorry, I  
13 don't have my glasses. I think it's -- anyway, this  
14 guy right here.

15 Q. The tank.

16 A. That's a bulk tank. And what we do, we  
17 put our raw farm milk in this tank.

18 Q. Okay. And that was part of the shipment.  
19 You had raw milk in the --

20 A. It was empty.

21 Q. That was empty?

22 A. Yeah. I was on -- when I have the milk,  
23 I don't have the cheese. In other words --

24 Q. Okay. So when you first start, leaving  
25 the farm, you have raw milk.

1           A.    I have milk in that tank, right.

2           Q.    Milk in the tank.  And where is the first  
3 place you go to from your farm?

4           A.    I call in the evening, we find out what  
5 their schedule is, because it changes, their pickup  
6 schedule, because I'm meeting their truck.  And so I  
7 find out what time, and then I go to the truck stop  
8 and either meet them immediately or sleep until they  
9 show up and trade me.  They pump off the milk and  
10 give me cheese.

11          Q.    So what are you transporting this milk  
12 in?

13          A.    That big tank.

14          Q.    Is the tank in the same truck?

15          A.    Yeah.

16          Q.    Okay.

17          A.    It's in the refrigerated -- the tank's on  
18 a pallet in the truck is what it amounts to.

19          Q.    And so you take that tank of milk to  
20 another location.  Where would that be?  Where is the  
21 first location you take it to?

22          A.    The truck stop at the corner of 33 and  
23 707.

24          Q.    And is that in Indiana?

25          A.    That's in Ohio.

1 Q. That's in Ohio, okay.

2 A. And the reason we use that, that's the  
3 farthest they come this way, and that's the closest I  
4 can get to them.

5 Q. That's okay.

6 Now, when they take your milk, they  
7 withdraw the milk with some apparatus?

8 A. Right. It's a pump. A milk pump. Gas  
9 powered. Just a powered pump.

10 Q. And you drive your truck back to the  
11 farm. In Indiana?

12 A. No. Ohio. I'm in Ohio.

13 Q. You're in Ohio, okay. So they're taking  
14 your milk --

15 A. And they give me their cheese, the cheese  
16 they either made or the cheese I'm buying from them.

17 Q. Okay. We'll get to that in a second.

18 A. Okay.

19 Q. So they're taking your raw milk and  
20 then --

21 A. They make cheese from it.

22 Q. When do you see that next?

23 A. Do it once a week. So the following week  
24 is when I see the cheese.

25 Q. What product do you get back from the

1 people that take your milk?

2 A. Whatever I tell them to make. They'll  
3 make like a mozzarella or cheddar or chipotle.

4 Q. They make cheese with your milk.

5 A. Whatever flavor I need I tell them.

6 Q. But they're making cheese with your milk.

7 A. Right.

8 Q. And are they making the block of cheese?

9 A. Right. A 40-pound block, right.

10 Q. So then they give you the block of  
11 cheese. And do they load it in your truck, or do you  
12 load it in your truck?

13 A. Both. I mean, we just, you know, we  
14 (indicating).

15 Q. Okay. So now you have blocks of cheese  
16 in boxes as it's shown in the photograph.

17 A. Right.

18 Q. Now, where do you go with that product?

19 A. It ultimately ends up at Lanning's, but I  
20 usually head right back to the farm because I'm  
21 usually dead tired. So then I take a nap. And I go  
22 in, I have a thing at 5 o'clock for them, and so I  
23 take it in at that time.

24 So the first place the truck ends up is  
25 back at my farm. And I usually sleep until I have to



1 go in and help them at 5.

2 Q. Is that where you were going with this  
3 load, back to your farm?

4 A. Yes.

5 Q. Which is in Ohio?

6 A. It's in Ohio.

7 Q. Okay. So you accepted the boxes of  
8 processed cheese as shown in Staff's photos --

9 A. Right.

10 Q. -- in Ohio.

11 A. Right.

12 Q. And you took that to your home in Ohio.

13 A. Right.

14 Q. That's when you were stopped.

15 A. I was on my way home, yeah.

16 Q. You were taking the processed cheese back  
17 to your house.

18 A. Right.

19 Q. Okay. Then what happens after you get  
20 the cheese?

21 A. We store it. They have big cold storage,  
22 you know, pallets on shelves. You know, it has to be  
23 refrigerated at Lanning's. Then usually either  
24 Thursday night or Friday night we go in and make  
25 these -- make the little pieces, packed in this, and

1 we pack them in coolers and take them to the markets.

2 Q. You keep saying "Lanning's." Is that  
3 your business?

4 A. No. That's who I -- we rent from them.  
5 But I also, as you'll see in Exhibit -- I'll show you  
6 the picture. I won't even try to read the number.  
7 That one.

8 Q. Picture of the truck.

9 A. I bought the truck from them.

10 Q. You bought their truck.

11 A. That was their old truck. And so --

12 Q. But you keep the name on the truck.

13 A. Well, if you take those off, they really,  
14 really look nasty. So I have not -- I have not taken  
15 it off.

16 Q. But it's your truck.

17 A. It's my truck.

18 Q. It's not Lanning's truck.

19 A. It's not Lanning's truck.

20 Q. But you're driving a truck that has a  
21 Lanning's identification number on it? Name?

22 A. It has a sign on the side of it, yes, it  
23 does. And I didn't even realize the front plate was  
24 not changed. I mean, that was my -- that was an  
25 error on my end. That will be fixed if it hasn't

1     been already.

2             Q.     Just so I understand, your position is  
3     that because you were transporting blocks of  
4     processed cheese back to your farm to sell at a  
5     farmers market, you believe that's a farm supply.

6             A.     It's either my farm product or my farm  
7     supply, either one. It's the same difference, so it  
8     doesn't matter which one you want to follow. That's  
9     where I make -- it's never -- I'm the owner.

10            Q.     Once you take that block of cheese back  
11    to your farm, what do you do with it?

12            A.     It stays in the truck. The reefer has to  
13    run until I get to cold -- it sits in the truck until  
14    I take it and unload it at Lanning's.

15            Q.     And you take it to Lanning's. And what  
16    does Lanning's do with it?

17            A.     I put it up on a shelf at Lanning's.  
18    They don't do anything with it. I rent storage space  
19    from them. So they don't physically touch any of my  
20    product.

21            Q.     What happens to that cheese that's  
22    sitting there?

23            A.     Well, on either Thursday night or Friday  
24    night we get it down and make the little pieces that  
25    we need and then that block is gone, we take it and

1 sell it at the market. And any of the ones we don't  
2 sell come back to there. We store both in this size  
3 and the block size in their refrigeration.

4 Q. The size you're --

5 A. It's an 8-ounce. That's what we -- all  
6 of them are the same price on the table, 6, two for  
7 10, it makes it easier. They're all the same. A  
8 little over 8 ounces, but none under 8 ounces.

9 EXAMINER WILEY: I don't have any other  
10 questions. Do you have anything else to add?

11 Mr. Jones.

12 MR. JONES: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Jones:

16 Q. Mr. Daniels, the Respondent's Exhibit  
17 No. 1 regarding the food service operation license,  
18 this is issued by the Knox County Health Department;  
19 is that correct?

20 A. Correct.

21 Q. And this is pertaining to the mechanical  
22 refrigeration of prepackaged cheese to keep it for  
23 the safety for -- because you're selling it, right?

24 A. You keep it under 41.

25 Q. Right.

1           A.     However you do it, you keep it under 41.  
2     And I'm allowed to use coolers to do that for four  
3     hours.

4           Q.     So anytime you're transporting cheese  
5     they have certain requirements as far as temperatures  
6     are concerned --

7           A.     Correct.

8           Q.     -- for keeping it refrigerated --

9           A.     Correct.

10          Q.     -- so it won't spoil; is that correct?

11          A.     Correct.

12          Q.     Because if that spoils, it's a hazard for  
13     the public who consume that cheese; is that correct?

14          A.     Correct.

15          Q.     And that's what this is all about. Your  
16     Respondent's Exhibit 1 addresses the safety issue  
17     with dealing with cheese in the public; is that  
18     correct? As far as transporting it.

19          A.     This has nothing to do with transporting.  
20     This only has to do with -- this allows me to sell to  
21     the public. I have to have this to be able to sell  
22     at farmers markets. This has nothing to do with the  
23     transportation. It's only to allow me to sell it. I  
24     have to have this with me when I'm at the farmers  
25     markets selling.

1           Q.    It's to maintain conditions under which  
2   you're holding that cheese, right, as far as  
3   temperatures for that?

4           A.    Right.

5           Q.    Okay.  And I believe that you have an  
6   exhibit up there of cheese; is that correct?

7           A.    Yes, it is.

8           Q.    And that's Respondent's Exhibit 2.

9           A.    Uh-huh.

10          Q.    And that's an 8-ounce pack of cheese.

11          A.    Correct.

12          Q.    Okay.  And it's your testimony,  
13   Mr. Daniels, that according to, as we saw depicted in  
14   Staff Exhibits 2G and 2H, when we see big boxes of  
15   cheese, this is, what, a 40-pound box of cheese?

16          A.    They all vary.  Like this one actually  
17   happens to be a, the weight is actually on them,  
18   that's a 26-pound block and then this other, I mean,  
19   but yes, that whole thing in there is one piece.  
20   This one's a 40.06, the first exhibit.  But it's  
21   whatever it ends up -- that chunk ends up being.

22          Q.    Okay.  So my understanding here of what  
23   you were doing as far as you would take milk from  
24   your farm and you would transport it as depicted in  
25   2F, it shows this big round container that you would

1 have the milk in; is that correct?

2 A. Correct. Yes.

3 Q. And you would take that and it would be  
4 processed in Berne, Indiana, into cheese.

5 A. Correct.

6 Q. They actually add ingredients to your  
7 milk, because you can request certain types of  
8 cheeses as you testified to?

9 A. Well, it's not an ingredient. It's a  
10 culture and a processing. In other words, like a  
11 mozzarella is just my milk with certain -- they add a  
12 culture and salt is what they amount to. Less than  
13 1 percent.

14 Q. So they're adding other things to it.

15 A. Yeah. Yeah. But it's 99 percent my  
16 milk, yes.

17 Q. And the composition of that product  
18 changes; is that correct?

19 A. Correct. I mean, whichever, you know,  
20 whatever we need, that's what type they make for us.  
21 You have a colby or cheddar or mozz, or whatever,  
22 whatever -- and that's just the way they make my  
23 milk. You know, each cheese, temperature, bacteria,  
24 whatever.

25 EXAMINER FARKAS: Along those lines, what

1 kind of cheese was on this shipment?

2 MR. DANIELS: Oh, I'll have 15, 20 types,  
3 so we have -- in other words, at the farmers market  
4 we have 15 types on the table is normal. So the  
5 biggest share of that pile will be whatever they made  
6 me the time before, which I don't remember.

7 EXAMINER FARKAS: Are the products that  
8 Lanning's is adding to your milk --

9 MR. DANIELS: SwissLand.

10 EXAMINER FARKAS: SwissLand. Is it all  
11 organic material?

12 MR. DANIELS: The only thing they add is  
13 a culture, which is organic approved, it's not a true  
14 organic, and salt which, again, is an allowable  
15 thing. It's not a, quote, "organic" salt, but it's  
16 an allowed product. You're allowed 5 percent is what  
17 you're allowed on the organic.

18 EXAMINER FARKAS: And those products that  
19 they're adding, are those farm products, or what kind  
20 of products?

21 MR. DANIELS: Salt and culture. I mean,  
22 it's cheese culture. It's, you know, salt would be  
23 the same I feed the animals, but cheese culture's a,  
24 you know, a dried bacteria frozen in a jar, you know,  
25 they put in there. So it's a cheese making thing,



1 you know what I'm saying?

2 EXAMINER FARKAS: Percentagewise, if you  
3 have your 8-ounce size cheese, what percentage of  
4 that would be this other material that they would  
5 have modified the milk with?

6 MR. DANIELS: Right at 2 percent, most of  
7 that salt. In other words, the bacteria's nothing.  
8 You know, 5 ounces does 5,000 pounds, you know. The  
9 bugs aren't anything. And then the salt's around  
10 2 percent. So that's where it would be at.

11 EXAMINER FARKAS: Okay.

12 Q. (By Mr. Jones) Mr. Daniels, so you take,  
13 in a liquid milk form, milk to this plant and then  
14 the plant in Indiana, this processing plant, what  
15 they do is then they convert it into cheese.

16 A. Correct.

17 Q. And they add some salt and some other  
18 things to it to get that change to occur. And so  
19 then after they're done, they have these blocks of  
20 cheese that they then package, right?

21 A. Right.

22 Q. And they also box it. And then you get  
23 those back and you're taking those back for yet to  
24 have further processing back at your place because  
25 now you're cutting those big blocks up into smaller

1 pieces, right?

2 A. Correct.

3 Q. And then you're also, then, relabeling  
4 them?

5 A. Right. And I retain ownership the whole  
6 time. And it's from my farm going to the farmers  
7 market. There's no more direct to the market than  
8 that. So it's still back to it's a farm product.

9 EXAMINER FARKAS: Following up on that,  
10 the further processing you're doing is basically  
11 what, cutting the --

12 MR. DANIELS: I cut 40-pound block and  
13 make these and vacuum seal them in their facility.  
14 You have to have food -- to be able to sell it, I  
15 have to have a food-grade facility.

16 EXAMINER FARKAS: Right.

17 MR. DANIELS: You know, I can't do it at  
18 the farm. They would kill me if I did it at the  
19 farm.

20 EXAMINER FARKAS: Okay. I understand.

21 MR. DANIELS: You know what I'm saying.  
22 I have to use the food system, but I'm using the food  
23 system -- I'm paying them to make the cheese, you  
24 know, I'm hiring them. I pay them a dollar a pound  
25 to make my cheese.

1 EXAMINER FARKAS: Right.

2 MR. DANIELS: And then I retain, you  
3 know, of course the milk's mine, and I do buy extra  
4 cheese from them, but it's a supply, again, for my  
5 farm. And we make the -- we do this one and just  
6 print the label, you know, we do this end.

7 EXAMINER FARKAS: Okay.

8 Q. (By Mr. Jones) Mr. Daniels, you did not  
9 have a commercial drivers license at the time of this  
10 inspection, right?

11 A. No.

12 Q. You did not have a medical certificate.

13 A. That is correct.

14 Q. And the gross vehicle weight of your  
15 truck was over 26,000 pounds, 26,001 pounds. In  
16 fact, it was 32,000 pounds, correct?

17 A. Correct. But if you will see on Exhibit  
18 I, you have to look really hard on this one, under  
19 the P, that's actually 22 is all we have on the  
20 weight, just because I don't -- I never run the truck  
21 full. The milk is 4,000 pounds and the cheese is  
22 whatever. But at the same time, that's still exempt  
23 under the farm. There's no weight limit under the  
24 farm exemption so that's a moot point. It doesn't  
25 match.

1           Q.    And how many packages did you have on  
2   that truck at the time of the inspection?

3           A.    I would guess a normal was right around  
4   20 and that would be like 10 from my last set and  
5   then another 12 flavors or so. So that's -- because  
6   I always have some in Lanning's in reserve, and so I  
7   would say around 20 40-pound boxes.

8           Q.    And from the point of where you were  
9   inspected to the point of Berne, Indiana, it's what,  
10   a half hour's drive from there?

11          A.    From the -- I can address for sure the  
12   truck stop where I meet him to there is 10 miles.

13          Q.    Ten miles. Ten minutes?

14          A.    Yeah.

15          Q.    Why that arrangement?

16          A.    Because it lets them -- it does two  
17   things: Keeps me in Ohio so my farm exemption works;  
18   it lets them schedule my stuff at their convenience  
19   because they have a reefer truck and stuff, and that  
20   way they can make my stuff at their convenience and  
21   it saves me running time. So it's a convenience  
22   factor.

23          Q.    It doesn't cost you more for them to come  
24   out and meet you in Ohio from Indiana from where  
25   they're coming from?

1           A.    They like the amount of cheese I sell for  
2   them.   How's that sound?

3           Q.    Well, with just --

4           A.    They deliver, I mean, they deliver all  
5   over the state.   They don't -- the reason I have to  
6   go over there is because they can't get the milk, but  
7   they come to Columbus.   I mean, they do cheese also,  
8   you know, I'm not their only cheese.   But they'll do  
9   whatever it takes to sell cheese and we just, we  
10   work -- we're symbiotic, very, you know, work well  
11   together.

12          Q.    But you only had 20 boxes of cheese,  
13   right?

14          A.    Yeah, but 20 boxes a week add up pretty  
15   good over a year.

16          Q.    At the time of the inspection you told  
17   the officer that the origin from your trip was Berne,  
18   Indiana; is that correct?

19          A.    The origin of the cheese was Berne,  
20   Indiana.   That's what I was asked by him on that  
21   verification, where it came from.   I made no, you  
22   know, it's obvious on the boxes, you know, that  
23   actually --

24          Q.    Whether or not it came directly from  
25   Berne or whether or not you picked it up --

1 THE REPORTER: Excuse me. I can't get  
2 both at the same time.

3 EXAMINER FARKAS: You've got to go one at  
4 a time.

5 A. I'm sorry.

6 Q. Mr. Daniels, whether or not it came  
7 directly from Berne as a direct trip or whether or  
8 not you got it at the line, it's still all in the  
9 stream of commerce to that point, right?

10 A. Yes, but there's a big significant  
11 difference in the farm use in Ohio. So there's a big  
12 distinction on that one.

13 Q. And let me ask you, how many of those  
14 boxes were cheese that you purchased that wasn't from  
15 your milk?

16 A. A normal make is around 10 to 12 boxes  
17 and then -- and it's all the same kind, so then we  
18 usually end up with 12 to 15 boxes of varied kinds.  
19 So, you know, those are pretty consistent week to  
20 week, you know, of what I need and what --

21 Q. So some of the boxes that were on that  
22 truck were not processed from your milk; is that  
23 correct?

24 A. That is correct.

25 Q. Okay.

1           A.     But I buy them as supplies for our farm  
2     so it still follows under the exemption.

3           MR. JONES:   That's all I have, your  
4     Honor.

5           EXAMINER FARKAS:   I just want to clarify.  
6     Do you have a question?

7           EXAMINER WILEY:   I do not.

8                                 - - -

9                                 FURTHER EXAMINATION

10    By Examiner Farkas:

11           Q.     I just want to follow up on that.   Some  
12    of the boxes of the cheese weren't from your milk?

13           A.     Correct.

14           Q.     How many of the boxes weren't from  
15    your -- where did they come from?

16           A.     I buy them from SwissLand.   You know,  
17    he's a bigger -- he's not huge.   He's a small cheese  
18    maker, but he's a lot bigger than I am.   And so like  
19    a normal -- my milk normally goes 10 to 12 boxes is  
20    what it makes, you know what I'm saying, what I  
21    normally take him, and then the other 12 to 15 is so  
22    we end up with about 15 types at the market.   The  
23    other 12 to 15 types I buy from him.

24           Q.     So how many boxes were in the shipment  
25    when you were stopped?

1           A.     Twenty. Around in there. I mean, you  
2     can see, look at Exhibit -- you can kind of see the  
3     pile on one of these. You can kind of see it piled  
4     up here. See in Exhibit G, 1, 2, 3, 4, 5, 6, 7, 8,  
5     9, 10, 11. They were stacked along the one wall of  
6     the truck is how they were stacked, so there was  
7     probably, a good guess is 20 boxes.

8           Q.     Let's assume it's 20 boxes. Of the 20  
9     boxes how many were from your milk?

10          A.     A normal --

11          Q.     Well, no. On this shipment.

12          A.     I have no idea on this shipment, but a  
13     normal is 10 to 12.

14          Q.     So about half.

15          A.     Half of them were from my milk.

16          Q.     And, again, this cheese, you were taking  
17     it, after accepting it from SwissLand, you were  
18     taking it to -- you ended up taking it to your house.

19          A.     Yeah. That's the first stop. Yes.

20          Q.     That's always the first stop is you go to  
21     your house --

22          A.     Yes.

23          Q.     -- to sleep.

24          A.     Yes.

25          Q.     And then it goes to the processing --



1 A. Correct.

2 Q. -- place. You cut it up and vacuum seal  
3 it.

4 A. Right.

5 Q. One last question. In the inspection  
6 report, in the inspection notes, do you have any  
7 issue with the way that's described?

8 A. These notes down here below?

9 Q. Yes.

10 A. I should, you know, when we were talking,  
11 the two of us at the truck stop, I made no, you know,  
12 the cheese was made at Berne. I made no distinction  
13 of the connections over at the truck stop so that  
14 statement there that I, you know, it was my cheese  
15 from last week, I wasn't physically there, but that's  
16 just, you know, that's, again, that was just how we  
17 were talking. And there wasn't any -- if you  
18 understand that one.

19 Q. There wasn't any what?

20 A. At that time I didn't bring up meeting  
21 the guy over there because it didn't matter. I mean,  
22 we were sitting at the truck stop, you know. The  
23 cheese was from Berne. I didn't explain to him how  
24 we made connections at the truck stop and stuff, and  
25 it never came up in our conversation. I didn't

1 elaborate on it, and he didn't know anything about  
2 it, so it's not -- neither one is a false statement,  
3 but I wanted the distinction made. CDL-wise, I did  
4 not leave Ohio.

5 Q. Now, the other question I have is when  
6 you get this cheese from SwissLand that takes your  
7 milk, you pay them, correct?

8 A. I pay them to process it, right.

9 Q. And then when you take that, the boxes of  
10 the SwissLand cheese to the processing facility which  
11 is called --

12 A. Lanning's.

13 Q. -- Lanning's, you also pay them.

14 A. All I pay Lanning's is rent. I just  
15 rent, store --

16 Q. You use their equipment and do it  
17 yourself.

18 A. I just pay them a monthly rent fee is  
19 what I pay Lanning's.

20 Q. And this is all your product. Nobody's  
21 paying you to do this transportation.

22 A. No.

23 EXAMINER FARKAS: All right.

24 EXAMINER WILEY: Mr. Jones, do you have  
25 any further questions?

1 MR. JONES: I did have a question, your  
2 Honor.

3 - - -

4 FURTHER CROSS-EXAMINATION

5 By Mr. Jones:

6 Q. Mr. Daniels, the cheese that you buy, the  
7 half load from SwissLand, what do you do with that  
8 cheese?

9 A. We also -- we sell it also.

10 Q. But you do buy that from SwissLand,  
11 right?

12 A. Yeah. We do buy that from SwissLand.

13 Q. And you turn around and resell that,  
14 resell that --

15 A. I sell that at the farmers market.

16 Q. -- as retail.

17 A. Farmers markets aren't retail. The only  
18 thing we sell at is the farmers market. It just  
19 treats us well. We don't do any stores, period,  
20 ever.

21 MR. JONES: That's all I have, your  
22 Honor.

23 EXAMINER WILEY: Mr. Daniels, based on  
24 the questions that Mr. Jones had is there anything  
25 else you'd like to add?

1 MR. DANIELS: No, thanks, your Honor.

2 EXAMINER WILEY: Do you have any further  
3 questions? All right. Thank you. You may step  
4 down.

5 MR. DANIELS: Thank you.

6 EXAMINER WILEY: Just to let the record  
7 reflect, you would like your food service operation  
8 license to be marked as Respondent's Exhibit 1.

9 MR. DANIELS: Okay.

10 EXAMINER WILEY: And we've marked your  
11 cheese as Respondent's Exhibit 2.

12 MR. DANIELS: If that's acceptable.

13 EXAMINER WILEY: Would you like to  
14 move -- as far as Respondent's Exhibit 1, the food  
15 service operation license, would you like to move for  
16 that to be put into evidence?

17 MR. DANIELS: Yes, please.

18 EXAMINER WILEY: Okay. Mr. Jones.

19 MR. JONES: No objection, your Honor.

20 EXAMINER WILEY: All right. The food  
21 service operation license, Respondent's Exhibit 1,  
22 will be admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 EXAMINER WILEY: Let's go off the record.

25 (Discussion off the record.)

1 EXAMINER WILEY: Let's go back on the  
2 record.

3 Let's let the record reflect that the  
4 respondent has marked an image of an approximate  
5 8-ounce block of his cheese as Respondent's Exhibit  
6 2. Would you like to move to admit this exhibit in  
7 evidence?

8 MR. DANIELS: Yes, please.

9 EXAMINER WILEY: Do you have any  
10 objection?

11 MR. JONES: No objection, your Honor.

12 EXAMINER WILEY: Respondent's Exhibit 2  
13 will be admitted into evidence.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER WILEY: Do you have anything  
16 further to add?

17 MR. DANIELS: I don't think so. No, your  
18 Honor.

19 EXAMINER WILEY: You may be excused. You  
20 can step down.

21 (Witness excused.)

22 EXAMINER WILEY: Do the parties have any  
23 desire to submit briefs on this issue?

24 MR. JONES: No, your Honor.

25 EXAMINER WILEY: Mr. Daniels, would you

1 like to submit a brief on the issue?

2 You can have a seat.

3 MR. DANIELS: I don't know what that is,  
4 I'm sorry.

5 EXAMINER FARKAS: A brief would be a  
6 written argument made by you about this case based on  
7 what's on the record.

8 MR. DANIELS: I'm better talking than I  
9 am writing. I'm sorry.

10 EXAMINER FARKAS: Okay. That's fine.

11 EXAMINER WILEY: Are there any other  
12 matters that need to come before us today?

13 MR. JONES: Nothing by Staff, your Honor.

14 EXAMINER WILEY: Do you have anything  
15 further, Mr. Daniels?

16 MR. DANIELS: No, your Honor.

17 EXAMINER WILEY: All right. Hearing  
18 none, we are adjourned. Thank you very much.

19 (The hearing concluded at 11:37 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, May 3, 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-3837)

- - -

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Summary: Transcript Transcript of Douglas Daniels hearings held on 05/03/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.