

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of Kirila :
Contractors, Inc., Notice : Case No 15-908-TR-CVF
of Apparent Violation and :
Intent to Assess Forfeiture.:

- - -

PROCEEDINGS

before Mr. Nicholas Walstra, Attorney Examiner, at
the Public Utilities Commission of Ohio, 180 East
Broad Street, Room 11-C, Columbus, Ohio, called at
10:00 a.m. on Monday, August 4, 2015.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Mr. Robert Kirila
3 Kirila Contractors, Inc.
4 P.O. Box 179
5 Brookfield, Ohio 44403-0179

6 Pro se.

7 Mike DeWine, Ohio Attorney General
8 William L. Wright, Section Chief
9 Public Utilities Section
10 Ms. Katie Johnson
11 180 East Broad Street
12 Columbus, Ohio 43215-3793

13 On behalf of the Staff of the Public
14 Utilities Commission.

15 - - -

INDEX

- - -

WITNESS	PAGE
John Brayer	
Direct Examination by Ms. Johnson	7
Examination by the Attorney Examiner	28
Tom Persinger	
Direct Examination by Ms. Johnson	30
Robert Kirila	
Direct Testimony	34
John Brayer - Rebuttal	
Direct Examination by Ms. Johnson	39

- - -

EXHIBITS

STAFF EXHIBITS	IDFD	ADMTD
1 - Driver/Vehicle Examination Report	11	41
2 - Photograph	15	41
3 - Photograph	15	41
4 - Photograph	15	41
5 - Photograph	15	41
6 - Photograph	15	41
7 - Photograph	15	41
8 - Photograph	15	41
9 - Photograph	15	41
10 - Photograph	15	41
11 - Photograph	15	41
12 - Notice of Preliminary Determination	32	41

Monday Morning Session,

August 4, 2015.

- - -

THE ATTORNEY EXAMINER: The Public Utilities Commission of Ohio has called for hearing at this time and place Case No. 15-908-TR-CVF, being In the Matter of Kirila Contractors, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture.

My name is Nick Walstra. I am the attorney-examiner assigned to hear this case.

Let's take appearances of the parties beginning with staff.

MS. JOHNSON: Good morning. On behalf of the staff of the Public Utilities Commission of Ohio, Attorney General Mike DeWine, Section Chief William Wright, Assistant Attorney General Katie Johnson, 180 East Broad Street, Sixth Floor, Columbus, Ohio 43215.

THE ATTORNEY EXAMINER: Thank you.

On behalf of Kirila.

MR. KIRILA: Robert Kirila, Kirila Contractors, Brookfield, Ohio.

THE ATTORNEY EXAMINER: Thank you.

Before we get started, are there any procedural matters we need to go over?

MS. JOHNSON: No, your Honor.

1 THE ATTORNEY EXAMINER: Okay.
 2 Mr. Kirila, being a private corporation, technically
 3 the rules say you should have an attorney, but there
 4 is an exception that allows you to do the hearing
 5 without an attorney. The staff still has to present
 6 their case. They still have to prove their case.
 7 They can put on witnesses and question them. Because
 8 you don't have an attorney, you can't question their
 9 witnesses.

10 When they're concluded with their
 11 case-in-chief, then you will be able to take the
 12 stand and give your testimony as you see things, but
 13 they will be able to cross-examine as to what you
 14 say, and that will go to the Commission when they
 15 make their decision.

16 MR. KIRILA: Understood.

17 THE ATTORNEY EXAMINER: If you get a
 18 chance to present you case and I swear you in, and
 19 this is a forfeiture matter you, are you protesting
 20 the forfeiture amount that's assigned for the
 21 violation?

22 MR. KIRILA: Yes.

23 THE ATTORNEY EXAMINER: Are you
 24 contesting that there was a violation or the amount?

25 MR. STEINBACH: Right. That the violation

1 is improper.

2 THE ATTORNEY EXAMINER: Okay. There's an
3 amount of forfeiture associated with that. Are you
4 contesting that amount, or can we stipulate to that?

5 You have a witness for that, I assume.

6 MS. JOHNSON: Yes, we do.

7 Maybe a little more explanation. So the
8 staff uses forfeiture schedules to determine the
9 amount of violations for each violation that the
10 staff assesses, so for your violation the staff
11 calculated a fine of \$100.

12 MR. KIRILA: Right.

13 MS. JOHNSON: So I think what the hearing
14 examiner is asking you is if you are contesting the
15 staff's calculation of that \$100, or if you're --

16 MR. STEINBACH: No. No.

17 THE ATTORNEY EXAMINER: So you stipulate
18 that the scheduled amount would be \$100.

19 MR. KIRILA: Right.

20 THE ATTORNEY EXAMINER: It will just save
21 them from having to put on a witness.

22 MS. JOHNSON: Thank you.

23 THE ATTORNEY EXAMINER: Thank you for
24 your explanation.

25 MS. JOHNSON: Absolutely.

1 THE ATTORNEY EXAMINER: Is the State
2 ready to present their case?

3 MS. JOHNSON: Thank you, your Honor. We
4 would like to call Officer John Brayer.

5 - - -

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

9 DIRECT EXAMINATION

10 By Ms. Johnson:

11 Q. Good morning, Mr. Brayer.

12 A. Good morning.

13 Q. Could you please state your full name for
14 the record?

15 A. John Michael Brayer.

16 Q. And by whom are you employed?

17 A. State of Ohio, Highway Patrol, Warren.

18 Q. How long have you been employed by the
19 Ohio State Highway Patrol?

20 A. Seventeen and a half years.

21 Q. And what is your position with the Ohio
22 State Highway Patrol?

23 A. Motor carrier enforcement.

24 Q. How long have you been in that position?

25 A. Roughly between four and five years.

1 Q. What are your duties in your position as
2 a motor carrier enforcer?

3 A. To enforce motor carrier regulations, CFR
4 49.

5 Q. And what is your educational background?

6 A. High school, partial college, Air Force,
7 schooling for this motor carrier position.

8 Q. What type of training did you have for
9 your motor carrier enforcer position?

10 A. Two weeks Part A, which is driver; a week
11 of Part B, which is vehicle; a week of hazmat; a week
12 of bulk, nonbulk, and tanker.

13 Q. The standard training that is given by
14 the State to all motor carrier enforcers?

15 A. Yes.

16 Q. Do you have any certifications?

17 A. Yes, I do.

18 Q. Could you please explain what those
19 certifications are?

20 A. For each course that we take, we have to
21 fulfill the testing that we're given. I believe it's
22 an 80 percent criteria for you to pass. I'm not sure
23 on the percentage there. Once you pass the course,
24 you're granted a certificate, and then every year
25 after that you have to perform so many inspections

1 from Level 1s to hazmat to be recertified every year.

2 Q. And were you trained to enforce the
3 Federal Motor Carrier regulations?

4 A. Yes, ma'am.

5 Q. What is your jurisdiction?

6 A. District 4, Warren, Mahoning, Portage,
7 Geauga.

8 Q. Were you in your jurisdiction when you
9 stopped the vehicle operated by Kirila Contractors?

10 A. Yes. We were in Mahoning County.

11 Q. Were you on duty when you stopped the
12 vehicle?

13 A. Yes, I was.

14 Q. Now, without getting into the specific
15 violation yet, could you please just describe the
16 motor vehicle inspection process generally?

17 A. For the Level 1?

18 Q. Yes.

19 A. Level 1 is once we get the vehicle
20 stopped, we are going to perform an approach up to
21 the vehicle city to speak to the driver to get the
22 driver's credentials, trucking information,
23 insurance, registration. If there is a load, then we
24 get a receipt, bills for that load.

25 Then we put it into the computer, get

1 some information. We go back up to the driver. We
2 obtain the logbook, and start the physical inspection
3 on the vehicle.

4 Q. Can you explain briefly what an
5 inspection Level 2 would be?

6 A. Level 2 inspection is just a walk-around
7 where we also obtain the driver's information, the
8 carrier's information, the load information, and then
9 we do a physical inspection walking around the truck
10 making sure the lights, brakes, everything is
11 working, the tires are properly inflated, a load
12 securement, depending on what type of truck or
13 trailer they have.

14 Q. And moving on to this alleged violation,
15 specifically why did you pull over and identify the
16 vehicle operated by Kirila Contractors?

17 A. I noticed the driver passing me on 608.
18 He had a machine on the back of the trailer. In my
19 experience in dealing with the type of trailer and
20 machine loaded on it, I was looking for load
21 securement. When he passed me, I saw the front and
22 rear, and I made the decision to pull the driver over
23 to make an inspection. It did not appear at that
24 time he had the proper load securement.

25 Q. What type of document or report do you

1 create during a commercial motor vehicle inspection?

2 A. I don't know what the header, the number
3 of the revision of the paperwork is, but it's an
4 inspection report.

5 Q. And what kind of information does a
6 report contain?

7 A. It contains the driver, the carrier, the
8 truck, trailer, load, whatever type of vehicle that
9 person has that day.

10 Q. And did you generate an inspection report
11 during your inspection of the vehicle operated by
12 Kirila Contractors?

13 A. Yes, I did.

14 MS. JOHNSON: Your Honor, may I approach?

15 THE ATTORNEY EXAMINER: You may.

16 MS. JOHNSON: I would like to mark the
17 document as Staff Exhibit 1.

18 THE ATTORNEY EXAMINER: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. (By Ms. Johnson) Mr. Brayer, what is this
21 document?

22 A. It's a facsimile of my report.

23 Q. And who prepared the report?

24 A. I did.

25 Q. Okay. Does the report contain

1 information on matters that you observed directly?

2 A. Yes, ma'am.

3 Q. And when did you prepare the report?

4 A. December 31 at 1:47 p.m.

5 Q. Was that close to the time to when you
6 inspected the vehicle operated by Kirila?

7 A. Yes.

8 Q. And do employees of the Highway Patrol
9 make and keep this type of a record in the ordinary
10 course of business?

11 A. Yes.

12 Q. And is this report the same or
13 substantially the same as the inspection report you
14 generated when you inspected the vehicle operated by
15 Kirila?

16 A. Yes.

17 Q. Where do you send the report after the
18 traffic stop?

19 A. The driver gets one copy of it to hand in
20 to the carrier, and after I'm done at the end of the
21 day, I upload them to the PUCO.

22 Q. I'm going to ask you to take a look at
23 the document. What is the report number on the
24 inspection report?

25 A. 043225005703.

1 Q. And when -- I'm sorry. What is the date
2 on the inspection report?

3 A. December 31, 2014.

4 Q. And what time did the inspection begin
5 and end?

6 A. Time started 1:47 p.m. Time ended, 1425,
7 which would be 2:25 p.m.

8 Q. And what inspection level did you
9 perform?

10 A. A Level 2, walk-around.

11 Q. What was the origin of destination of the
12 vehicle operated by Kirila?

13 A. The driver commented he was coming out of
14 Austintown, Ohio, going back to Brookfield to their
15 place of business.

16 Q. Okay. And where did you pull over the
17 vehicle?

18 A. State Route 711, northbound, roughly mile
19 post 2 at Gypsy Lane.

20 Q. And what type of cargo was the vehicle
21 carrying?

22 A. Large piece of machinery.

23 Q. And what was the violation code number
24 that you cited Kirila Contractors with?

25 A. 392 -- 393.100 through 393.142. It

1 refers to 393.130C1 for no four-point securement.

2 Q. Okay. And do you see on the left side of
3 the inspection report under Violation Code, could you
4 please read that violation code for me?

5 A. It is violation code 392.9A1. It's what
6 we used to place the vehicle out of service.

7 Q. I think you read a portion of the
8 violation description before. Can you read the
9 entire violation?

10 A. 393.100 to 393.142 section refers to
11 heavy machinery and/or loads, commodity specific, how
12 it has to be secured. I cited to 393.130C1, no
13 four-point securement. The weight of the VIN plate
14 was 20,000 pounds.

15 Q. How much does a heavy vehicle or piece of
16 machinery that is on a commercial vehicle for hauling
17 have to weigh for these regulations to apply?

18 A. 10,001 or more.

19 Q. Does the regulation apply when the
20 vehicle is hauling back to Ohio?

21 A. Depending on the weight rating, yes.

22 Q. So if the backhoe weighs over 10,000
23 pounds, it has to be secured to the trailer in a
24 particular way?

25 A. Yes.

1 Q. And did you take photographs during your
2 inspection?

3 A. Yes.

4 MS. JOHNSON: Your Honor, I would like to
5 mark as Exhibits 2 through 11 the photographs taken
6 by Officer Brayer taken during the inspection of the
7 vehicle operated by Kirila Contractors.

8 THE ATTORNEY EXAMINER: So marked.

9 MS. JOHNSON: May I approach?

10 THE ATTORNEY EXAMINER: You may.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 Q. (By Ms. Johnson) Mr. Brayer, could you
13 keep the photographs in the order they are in, but
14 could you briefly shuffle through them and take a
15 look at all these photographs. Are those the
16 photographs you took during your inspection of the
17 vehicle operated by Kirila?

18 A. Yes, ma'am.

19 Q. You will see in the top right-hand corner
20 of the these photographs a marking; for example, the
21 first photograph says Staff Exhibit 2. Could you
22 take a look at Staff Exhibits 2 and 3 for me, please?

23 A. Okay.

24 Q. What are the photographs of Staff
25 Exhibits 2 and 3?

1 A. The purpose for Exhibit 2 it to get the
2 identification of the front end of the truck and the
3 plate on it.

4 Q. And for Staff Exhibit 3?

5 A. The owner or operator, who the truck is
6 with.

7 Q. Please turn to Staff Exhibit 4.
8 Generally speaking, can you describe what this
9 photograph shows?

10 A. It's showing the securement of the
11 backhoe, two chains across the back boom.

12 Q. I'm sorry, you said what?

13 A. The back boom, the hydraulic arm.

14 Q. Could you please turn to Exhibit No. 5?

15 A. Okay.

16 Q. What is the photograph of Staff
17 Exhibit 5?

18 A. This is the vehicle plate for the Case
19 backhoe.

20 Q. What brand of backhoe is listed on the
21 VIN plate?

22 A. Case 580, Super L, Construction King
23 tractor.

24 Q. That was the VIN plate on the backhoe
25 being hauled by Kirila?

1 A. Correct.

2 Q. And on the VIN plate there's a portion of
3 it, a section of it that states "for max gross
4 machine weight." What does that mean "max gross
5 machine weight"?

6 A. What a machine is rated for by the
7 manufacturer.

8 Q. What do you mean, "rated for"?

9 A. The manufacturer rates these machines for
10 the weight that come from the specs, and what we use
11 for the VIN plates, if the machines have it, that's
12 what we write the machine as.

13 Q. So by rated, you mean the weight of the
14 vehicle?

15 A. Correct.

16 Q. Now, what does the VIN plate state the
17 max gross machine weight of the backhoe is?

18 A. 20,000 pounds.

19 Q. Let's turn back to Staff Exhibit 4, which
20 was the picture of the backhoe we were just looking
21 at. First, could you look at the hydraulic arm of
22 the backhoe?

23 A. Okay.

24 Q. Explain to me in layman's terms, what is
25 the hydraulic rear arm of the backhoe?

1 A. The chains coming off the rear frame of
2 the machine from the pivot point where the bolt goes
3 through, you have one chain coming across there at
4 the arm and another pivot-point arm on the back where
5 you see the chain coming across the trailer on the
6 bottom.

7 Q. And how did the regulations apply for
8 this rear hydraulic arm to be secured?

9 A. One chain over the hydraulic arm or lift
10 that can be raised.

11 Q. And is the hydraulic arm secured?

12 A. Yes.

13 Q. And how many locations is it secured?

14 A. Two.

15 Q. Could you please explain to me where it
16 is secured in relation to the picture?

17 A. First securement is just rear of the
18 machine at the pivot point. That's the closest to
19 the rear of the machine. And the last chain is going
20 over the last part of the arm, usually where the
21 bucket is attached.

22 Q. Can you explain to me what you mean when
23 you say "machine"?

24 A. The frame of the machine itself.

25 Q. I'm sorry. Go ahead.

1 A. No. You were going to rephrase?

2 Q. But what is the machine itself? Does it
3 include the rear arm?

4 A. The frame of the machine does not include
5 the rear arm for securement. The rear arm is a
6 separate attachment point where that arm can
7 articulate up and down.

8 Q. Would another word for the machine be the
9 vehicle?

10 A. The machine would be the vehicle.

11 Q. How many securements does one chain
12 equal?

13 A. For the load here near the arm, he's
14 good. For the machine he needs a four-point
15 securement.

16 Q. Stepping back, if you have one chain
17 across your vehicle, how many securements is that?

18 A. One.

19 Q. Okay. So how many securements are there
20 on the rear hydraulic arm?

21 A. Two.

22 Q. So the rear hydraulic arm is properly
23 secured?

24 A. Yes.

25 Q. Okay. One single chain, why does that

1 only count as one securement?

2 A. The machine commodity-specific
3 requirement is 10,001 pounds require each one chain.
4 You can have multiple, but they are required to have
5 at least one chain on an hydraulic arm or shovel,
6 and those chains only by themselves for the
7 commodity-specific securement are just going to be
8 for the hydraulic arm.

9 Q. But the chain connects to the commercial
10 vehicle in two places, so why doesn't that constitute
11 two securements? Why is that chain only one?

12 A. For them to count for the machine, they
13 have to come straight from the machine.

14 Q. How would they come straight from the
15 machine? Would there be a binder or --

16 A. It would have two binders with two
17 separate chains, two binders with a straight chain
18 with two links, and those links have to come from the
19 rear two corners of the machine to the trailer
20 itself.

21 Q. Okay. Could you take a look at Staff
22 Exhibit 6, please? What does Staff Exhibit 6 show?

23 A. It's showing two things. It's showing
24 the securement of the hydraulic arm where it pivots
25 off the machine for the load securement for that arm.

1 But it also is not showing any rear securement coming
2 off the machine at two separate points.

3 Q. And just to be clear, so that chain on
4 the rear arm of the machine is not off the actual
5 machine?

6 A. Correct. It's coming off the hydraulic
7 arm.

8 Q. So is there also a front hydraulic bucket
9 on the backhoe?

10 A. Yes.

11 Q. Could you please turn to Staff Exhibit 7?
12 What does this photograph show?

13 A. Proper securement for the front bucket.

14 Q. And how do regulations require the front
15 hydraulic bucket to be secured?

16 A. It would be a tie-down and/or securement
17 strap, chain and binder.

18 Q. So is this front hydraulic bucket
19 properly secured?

20 A. Yes.

21 Q. Could you take a look at Staff Exhibit 8?
22 Now let's focus on the securement of the machine
23 itself, not including the rear arm or the front
24 bucket. Do the regulations require this machine to
25 be secured in a particular way?

1 A. Yes.

2 Q. And in what way must the machine itself
3 be secured?

4 A. The machine itself has to be secured in
5 four separate four-point securements, chains,
6 binders, coming off from the rear of the backhoe to
7 the side of the trailer and the front right side of
8 the backhoe to the side of the trailer.

9 THE ATTORNEY EXAMINER: Can you explain
10 what a binder is?

11 THE WITNESS: A ratchet. It can be
12 securing the chain to tighten it up.

13 THE ATTORNEY EXAMINER: Thank you.

14 Q. (By Ms. Johnson) Where is the binder
15 connected?

16 A. The binder on one side connects to a
17 chain and the other to either a D-ring at the side of
18 the trailer or just slide a clip of the binder across
19 the trailer frame.

20 Q. How many tie-downs are on this machine?

21 A. There are none on the right-hand side in
22 this photo.

23 Q. How many were on the machine, in general,
24 during your inspection?

25 A. The machine, zero.

1 Q. So, again, how many tie-downs were
2 required by regulations?

3 A. Four.

4 Q. And you found zero?

5 A. Zero.

6 Q. Okay. Would you please turn to Staff
7 Exhibit 9? What part of the backhoe does this show?

8 A. This is showing the front tires up
9 against the header of the trailer showing no
10 securement coming towards the front from the machine.

11 Q. Okay. And so how would the securement
12 typically be configured on the front of this machine?

13 A. Coming from the frame to the left side of
14 the tractor.

15 Q. When you say "frame," what do you mean?

16 A. The frame of the tractor.

17 Q. Okay. So, again, could you explain how
18 this would typically be secured?

19 A. You would be having two points on the
20 front, one from the left side of the tractor, chain
21 and binder to the left side of the trailer, and one
22 from the right side of the tractor to the right side
23 of the trailer.

24 Q. Now, is the front of this backhoe
25 secured?

1 A. No.

2 Q. What type of movement would a tie-down in
3 the front of the vehicle typically prevent?

4 A. It would prevent rear and forward
5 movement. In front it's supposed to secure it down,
6 which would prevent rear movement.

7 Q. Could you please turn to Staff
8 Exhibit 10? What part of the backhoe does this show?

9 A. This is a rear picture of the front tires
10 showing no securement.

11 Q. Okay. So would the front of the vehicle
12 either typically be secured in the front of the tires
13 or behind?

14 A. They would have it either way because if
15 they do it from the front to the front, then the
16 rear's got to be from rear to rear. If they go rear
17 to the front and pull them back this way, then the
18 rear has to be pulling forward to prevent the
19 movement.

20 Q. I'm sorry, I got a little confused. When
21 you talk about the rear to rear and front to front,
22 can you explain to me step by step if it is coming
23 from the front tires?

24 A. If it is coming from the front tires to
25 the front of the trailer, he has rear movement taken

1 care of. It cannot go back. But if it is coming
2 from the front of the tires and pulling to the sides
3 of the trailer behind the tires, that's going to
4 prevent the forward movement.

5 Q. So now could you please turn to Staff
6 Exhibit 11? Which portion of the backhoe does this
7 show?

8 A. The rear tires.

9 Q. How would they typically be secured?

10 A. It would be the same way. It would be
11 the front if they we're going to stop the forward
12 motion. For the rear they have to be secured from
13 the rear of the machine behind on the trailer, and
14 they want to have the chains underneath and pulling
15 toward the front of the trailer. To stop the forward
16 motion, they have to have it going underneath toward
17 the front.

18 Q. Is the rear of this machine secured?

19 A. No.

20 Q. So there are no tie-downs on the rear of
21 this machine?

22 A. No.

23 Q. So if I could, to make sure everything is
24 clear, I'm going to redirect you to Staff Exhibit
25 No. 4. So how many tie-downs do the regulations

1 require there to be on the rear arm of the backhoe?

2 A. One is required.

3 Q. How many tie-downs did Kirila have on the
4 rear arm of the machine?

5 A. Two -- the machine or the arm?

6 Q. I'm sorry. How many tie-downs were on
7 the rear arm?

8 A. Two.

9 Q. Thank you. And so was the rear arm of
10 the backhoe properly secured?

11 A. Yes.

12 Q. And how many tie-downs do the regulations
13 require to be on the front shovel of the backhoe?

14 A. One.

15 Q. And how many tie-downs did Kirila have on
16 the front shovel?

17 A. One.

18 Q. So was the front shovel properly secured?

19 A. Yes, ma'am.

20 Q. And how many tie-downs do the regulations
21 require to be on the machine to the actual vehicle of
22 the backhoe?

23 A. At least four is the minimum.

24 Q. At least four, okay. And how many
25 tie-downs were there on the vehicle or the machine of

1 the backhoe?

2 A. On the machine itself, zero.

3 Q. So the securement of this machine was not
4 in compliance with regulations?

5 A. Correct.

6 Q. And I'm going to direct you back to your
7 Vehicle Examination Report, your inspection report.
8 Did you write inspection notes in your report?

9 A. Yes, I did.

10 Q. And when did you write those inspection
11 notes?

12 A. Right prior to my completing the
13 inspection.

14 Q. Okay. Was the incident fresh in your
15 mind when you wrote those notes?

16 A. Yes.

17 Q. And can you read word for word those
18 inspection notes?

19 A. Are they on here?

20 Q. They're in the middle of the page under
21 the violation. It says "Hazmat" and it says "Special
22 Checks."

23 A. Okay. Your format is a little different
24 than mine.

25 "1 chain on front hydraulic bucket. 2

1 chains on rear hydraulic arm for back hoe. Viewed on
2 ir 680. No 4 point securement on machine." The last
3 thing I put is what the machine was, "Case Super L
4 580."

5 Q. This was an out-of-service violation?

6 A. Yes.

7 Q. And did you place the vehicle out of
8 service?

9 A. The trailer was placed out of service,
10 yes.

11 MS. JOHNSON: May I have a moment,
12 please, your Honor?

13 THE ATTORNEY EXAMINER: Yes.

14 MS. JOHNSON: Your Honor, at this time I
15 have no further questions for Mr. Brayer, but I would
16 like to reserve him for rebuttal.

17 THE ATTORNEY EXAMINER: Thank you. I
18 have a few questions for you.

19 - - -

20 EXAMINATION

21 By the Attorney Examiner:

22 Q. Did you do a walk-around inspection?

23 A. Yes.

24 Q. What instigated that level of inspection?

25 A. The violation I observed when he passed

1 me.

2 Q. Okay. And did you notice right away when
3 he passed you? What did you notice that made you --

4 A. Lack of securement.

5 Q. Okay. So you could tell when he passed
6 you that it was lacking chains?

7 A. Yes.

8 Q. Okay. And on Exhibit 5 with the VIN
9 plate, the weight that's on there, is that typically
10 filled out when you get a VIN plate? Do those always
11 have that information on there?

12 A. No. Just to take it a little further, if
13 I can, a lot of the machines when I do look for them,
14 if I can't find them, there's different procedures I
15 do. This is a rare case I've actually had a VIN
16 plate with that on it.

17 Q. Okay. What is your procedure if it's not
18 there?

19 A. If I don't have a VIN plate, I call up
20 our office. There is a manual on all heavy
21 equipment. If I'm able to get the office, they
22 answer my question. I give them the information that
23 I have. They look it up and give me the operating
24 weight of the vehicle.

25 Q. Okay.

1 A. If that doesn't suffice, I use my
2 smartphone, type the information in, get the specs,
3 and I use the spec operating weight from the
4 dealership. If I do not have any of the three,
5 people I can contact or find the information of the
6 weight of the vehicle, I release the vehicle.

7 THE ATTORNEY EXAMINER: Okay.

8 Any other witness?

9 MS. JOHNSON: Yes, your Honor. I call to
10 the stand staff witness Tom Persinger.

11 - - -

12 TOM PERSINGER

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

15 DIRECT EXAMINATION

16 By Ms. Johnson:

17 Q. Could you please state name for the
18 record?

19 A. My name is Tom Persinger.

20 Q. And where are you employed?

21 A. The Public Utilities Commission of Ohio.

22 Q. And what is your position?

23 A. My position is compliance officer in the
24 Transportation Department.

25 Q. And how long have you been in that

1 position?

2 A. Just over four years.

3 Q. And what are your duties in your capacity
4 in that position?

5 A. My duties include assessing fines on
6 completed inspections.

7 Q. And what is your educational background?

8 A. My educational background includes a law
9 degree as well as a Bachelor's in political science
10 and criminal justice.

11 Q. Do you have any certifications?

12 A. Yes. I have the North American Part A
13 and Part B training, as well as general hazmat, bulk,
14 and cargo tank certifications.

15 Q. And how does the staff of the
16 Transportation Department receive information about a
17 violation from an officer?

18 A. Once a field officer is done completing
19 their inspection, the inspection is then uploaded
20 into our system and servers, and each compliance
21 officer is assigned the case based upon their
22 particular day and type of case.

23 Q. And what kind of notification do you send
24 to the respondent to let them know that they have
25 been charged with a violation?

1 A. We will send them out an Intent to Assess
2 Forfeiture and Notice of Apparent Violation letter.

3 Q. Okay. And then once you've held a
4 conference with the respondent, what notice do you
5 then send out to the respondent?

6 A. Upon completion of a conference, if we
7 settle the case, we send out a settlement letter. If
8 there are still disagreements existing, we send a
9 Notice of Preliminary Determination letter.

10 MS. JOHNSON: Your Honor, I would like to
11 mark this document as Staff Exhibit 12.

12 THE ATTORNEY EXAMINER: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. JOHNSON: May I approach?

15 THE ATTORNEY EXAMINER: You may.

16 Q. (By Ms. Johnson) Mr. Persinger, what is
17 this document?

18 A. This is a Notice of Preliminary
19 Determination letter.

20 Q. And is the Notice of Preliminary
21 Determination kept in the course of regularly
22 conducted business?

23 A. Yes, ma'am.

24 Q. And is it made by someone with personal
25 knowledge of the case and inspection report?

1 A. Yes.

2 Q. And is it made contemporaneous or close
3 to the time when the staff member reviews the
4 inspection report?

5 A. Yes, ma'am.

6 Q. What is the case number for the NPD?

7 A. The case number on this is OH3225005703C.

8 Q. And what person and what address was this
9 NPD sent to?

10 A. This was sent to a Robert Kirila of
11 Brookfield, Ohio.

12 Q. And on what date was the NPD sent to the
13 respondent?

14 A. The date it was sent was on -- the letter
15 was sent on April 23, 2015.

16 Q. What is the amount of the -- I'm sorry.
17 What violation does the Notice of Preliminary
18 Determination list?

19 A. The violation is listed as a
20 392.9A1 violation, failing to secure cargo.

21 Q. What is the amount of the forfeiture
22 assessed?

23 A. The amount is \$100.

24 MS. JOHNSON: At this time I have no
25 further questions for Mr. Persinger.

1 THE ATTORNEY EXAMINER: Thank you.

2 MS. JOHNSON: I'd like to reserve him for
3 rebuttal.

4 THE ATTORNEY EXAMINER: Okay. Do you
5 have any other witnesses?

6 MS. JOHNSON: No, your Honor.

7 THE ATTORNEY EXAMINER: Mr. Kirila, you
8 can take the stand. We will swear you in. You can
9 reference any of the exhibits that the staff has
10 marked.

11 - - -

12 ROBERT KIRILA
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT TESTIMONY

16 THE ATTORNEY EXAMINER: Just go ahead
17 whenever you're ready.

18 MR. STEINBACH: All right. First of all,
19 it's not a matter of the \$100 fine. It's the
20 cumulative points that go against our company. It's
21 very instrumental in insurance and everything. It
22 follows along. It's not the \$100. Why I'm here is
23 the cumulative points.

24 First I'd like to bring up you keep
25 talking about Exhibit 5. Turn to that.

Exhibit 5 it's not the weight of the machine. That's the rating of the rollover protection system. That thing is designed to roll over and withstand 20,000 pounds. That's not the weight of the machine.

If you look to the top right of that specification, Rollover Protective Structure, so I don't know why you say that the machine weighs that. That's what it is rated if it rolls over. You see that part, top right-hand corner? It's plain as day.

So the reason we don't use the four-point securement on that, those machines aren't designed with four lugs to fight opposing chains like you're speaking about, so we've elected to use the header board method. That's the way that trailer is designed, all 580s.

If you turn to Exhibit 8, you can see those tires are pulled against a header board. That's a totally different securement rule. Even on 9 it shows there's no possible way that machine could roll forward. That's why a header board is designed like that.

You can see that the bucket is tied down for upward movement, and it's pulled tight against the header board.

If you want to look at the load

1 securement for a header board, it's saying that two
2 tie-downs for every 10 feet, so that's how we secure
3 that load, against the header board. We have three
4 chains. The machine's total length is 25 feet.
5 Four-point securement would be for a heavier machine,
6 like a dozer, articulating truck, a heavier piece of
7 machine. This machine's configuration is probably 15
8 to 16 thousand pounds, not 20,000 pounds. It's not
9 that -- we've had the configuration go through DOT
10 checks before because the employee has come back and
11 showed me what happened.

12 Every year we have our safety meeting,
13 this is one of the main things that we use. That's
14 like a staple of our industry. It's used all time.
15 We teach them to chain it like this because it's been
16 inspected this way before. If it had the lugs in the
17 front, I agree with him, you put opposing chains
18 forward, backward to prevent forward movement.

19 There's a header board installed for this
20 machine. This is not the first time it's been
21 stopped. I think the tractor is '91. It's made
22 trips and been stopped before. It's always passed.
23 That's how we teach our employees to secure a load.

24 THE ATTORNEY EXAMINER: How much does it
25 weigh?

1 THE WITNESS: I'm going to say 16,000 is
2 the heaviest configuration. I have that on an
3 operator's manual if you want to see it.

4 THE ATTORNEY EXAMINER: I'm fine.
5 Do you have anything else?

6 MR. KIRILA: I just -- well, right here
7 the rule, it's every 10 feet, and we have ample
8 tie-downs to the bulkhead.

9 MRS. KIRILA: I have something to say if
10 I could.

11 THE ATTORNEY EXAMINER: I'd have to open
12 you for cross-examination.

13 MRS. KIRILA: The book he's getting it
14 from, he didn't show you the book he's getting it
15 from. The information, it's an Ohio book.

16 THE ATTORNEY EXAMINER: I'll see if they
17 want to bring it up on cross-examination.

18 MRS. KIRILA: Thanks.

19 - - -

20 MS. JOHNSON: Your Honor, staff has no
21 questions of the witness.

22 THE ATTORNEY EXAMINER: Where are you
23 getting the rules for the header board and that
24 method from?

25 MS. JOHNSON: It's the guidebook, Ohio

1 guidebook.

2 THE ATTORNEY EXAMINER: What guidebook is
3 that?

4 MR. KIRILA: It's put out every year.
5 This is what we go by when we have our safety
6 meetings.

7 THE ATTORNEY EXAMINER: What is the title
8 of it?

9 MR. KIRILA: Truck Drivers Guidebook,
10 Ohio State Patrol, Commercial Standards, Motor
11 Carrier Enforcement Unit.

12 THE ATTORNEY EXAMINER: Do you have any
13 response to that, Ms. Johnson?

14 MS. JOHNSON: We plan on calling the
15 officer for rebuttal testimony so we can address it
16 then.

17 THE ATTORNEY EXAMINER: You may step
18 down.

19 MS. JOHNSON: Your Honor, may we have a
20 moment to confer?

21 THE ATTORNEY EXAMINER: Certainly.

22 (Discussion off record.)

23 MS. JOHNSON: Your Honor, we would like
24 to call to the stand Mr. Brayer for rebuttal.

25 THE ATTORNEY EXAMINER: Okay.

1 Mr. Brayer, you're still under oath.

2 THE WITNESS: Yes, sir.

3 - - -

4 REBUTTAL TESTIMONY

5 DIRECT EXAMINATION

6 By Ms. Johnson:

7 Q. Mr. Brayer, how many pounds does the
8 vehicle have to weigh for the regulation requiring
9 four tie-downs to apply?

10 A. Any type of commercial/noncommercial
11 vehicle that's being towed or the flatbed or any type
12 of trailer that has at least four point securements
13 is 10,001 pounds, so it has to be over 10,001 pounds.

14 Q. If it weighs over 10,001 pounds, how does
15 it have to be secured?

16 A. It's commodity specific. How much you
17 weigh, there is a certain procedure that they follow.

18 Q. How many tie-downs does it have to be?

19 A. Four tie-downs, one at each point.

20 Q. Are there regulations for a vehicle over
21 10,000 pounds to be secured using a header board?

22 A. No.

23 Q. Are there certain commodities that can be
24 hauled and secured using just a header board?

25 A. Yes.

1 Q. Can you give me some examples of those?

2 A. As long as they're not commodity
3 specific. A type of example is going to be steel
4 I-beams. They could have it up against the header
5 board and the header board acts as the securement
6 device from preventing it to shift forward.

7 Q. But a vehicle over 10,000 pounds cannot
8 be secured that way?

9 A. No.

10 Q. Officer, you heard the statement of
11 Mr. Kirila, and he mentioned that the vehicle likely
12 weighed between 15 to 17 thousand pounds. Does it
13 matter if it weighed 15 or 17 thousand pounds?

14 A. No. It is still over 10,001.

15 Q. As long as it's over 10,000 pounds, the
16 regulations apply?

17 A. Correct, on the machine.

18 MS. JOHNSON: We have no further
19 questions, your Honor.

20 THE ATTORNEY EXAMINER: What did you mean
21 by "commodity specific"?

22 THE WITNESS: In our Ohio criteria, we
23 have a section for commodities. Under commodity
24 specific type, there are requirements for securement
25 for that. One example would be machinery. Another

1 would be rollovers, crushed cars, a certain type of
2 securement.

3 THE ATTORNEY EXAMINER: Okay. That's
4 all. You may step down.

5 MS. JOHNSON: Your Honor, at this time
6 staff would move for admission of Staff Exhibits 1
7 through 12.

8 THE ATTORNEY EXAMINER: They will be
9 admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 THE ATTORNEY EXAMINER: I want to thank
12 everybody for coming. The Commission will take this
13 under advisement, and we will issue a ruling.

14 Thank you. We are adjourned.

15 (The hearing adjourned at 10:55 a.m.)

16 - - -

17

18

19

20

21

22

23

24

25

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

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, August 4, 2015, and carefully compared with my original stenographic notes.

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

My commission expires April 5, 2019.
(RFA-79028)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/24/2015 2:56:19 PM

in

Case No(s). 15-0908-TR-CVF

Summary: Transcript in the matter of Kirila Contractors, Inc. hearing held on 08/04/15 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.