

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of :  
Clifford R. Neely Notice : Case No.  
of Apparent Violation and : 17-1097-TR-CVF  
Intent to Assess Civil :  
Forfeiture. :

- - -

PROCEEDINGS

Before Nick Walstra and Stacie Cathcart,  
Attorney Examiners, held at the Public Utilities  
Commission of Ohio, 180 East Broad Street,  
Hearing Room 11-D, Columbus, Ohio, on Tuesday,  
August 8, 2017, at 10:00 A.M.

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1 APPEARANCES:

2 Mr. Steven Beeler  
3 Assistant Attorney General  
4 30 East Broad Street  
5 16th Floor  
6 Columbus, Ohio 43215

7 On behalf of the Staff of the  
8 Public Utilities Commission  
9 of Ohio.

10 Mr. Clifford R. Neely  
11 3381 Township Road 1089  
12 Butler, Ohio 44822

13 Appearing Pro se.

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Tuesday Morning,  
August 8, 2017.

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ATTORNEY EXAMINER WALSTRA: The  
Public Utilities Commission of Ohio has called  
for hearing at this time and place Case No.  
17-1097-TR-CVF being in the Matter of Cliff  
Neely Notice of Apparent Violation and Intent to  
Assess Forfeiture.

My name is Nick Walstra, and with me  
is Stacie Cathcart, we are the Attorney  
Examiners assigned by the Commission to hear  
this case.

We will start by taking appearances  
of the parties. And I will start with Staff.

MR. BEELEER: Thank you, your Honor.  
On behalf of the Staff of the Public Utilities  
Commission, Ohio Attorney General Mike DeWine.  
I am Steve Beeler, Assistant Attorney General.  
We are at 30 East Broad Street, 16th Floor,  
Columbus, Ohio 43215.

HEARING OFFICER: Thank you. Would  
you state your name and address for the record.

MR. NEELY: Cliff Neely, 3381  
Township Road 1089, Butler, Ohio.

1                   ATTORNEY EXAMINER WALSTRA: Thank  
2     you. We had some discussions off the record  
3     before we started. As I said, Mr. Neely,  
4     first Staff will have an opportunity to present  
5     their case, the facts, and then after that you  
6     will be able to go on the record and give your  
7     side of things under oath.

8                   And then the Commission will take  
9     the case under advisement.

10                  That being said, go ahead, Mr.  
11     Beeler.

12                  MR. BEELEER: Thank you, your Honor.  
13     At this time the Staff would like to call its  
14     first witness, Inspector Drake.

15                  (WITNESS SWORN)

16                  HEARING OFFICER: You may be seated.

17                                 - - -

18                                 JAMES DRAKE  
19     called as a witness, being first duly sworn,  
20     testified as follows:

21                                 DIRECT EXAMINATION

22     By Mr. Beeler:

23                 Q.     Good morning.

24                 A.     Good morning.

25                 Q.     Just again if you would please state

1 your full name for the record.

2 A. James Drake.

3 Q. Where are you employed?

4 A. Employed with the Department of  
5 Highway Safety, Public Safety.

6 Q. And you are under the Motor Carrier  
7 Enforcement Division of the State Highway  
8 Patrol?

9 A. Yes.

10 Q. Okay. What is your position at the  
11 Department of Public Safety and the State  
12 Highway Patrol?

13 A. State Trooper.

14 Q. How long have you been with the  
15 Patrol?

16 A. Twenty-nine years.

17 Q. And how long have you been in the  
18 Motor Carrier Enforcement Division of the  
19 Highway Patrol?

20 A. Approximately little over one year.

21 Q. And your current duties --

22 A. Actually, I think it would be  
23 probably about a year and a half.

24 Q. What are your duties in your current  
25 capacity?

1           A.    To basically deal with commercial  
2 motor vehicle inspections, enforcement, things  
3 of that nature.

4           Q.    What sort of training do you have in  
5 this area?

6           A.    We have training down at our academy  
7 and it's over the Federal Motor Vehicle  
8 regulations.

9           Q.    And you took this training?

10          A.    Yes.

11          Q.    And you completed the course?

12          A.    Yes.

13          Q.    And you completed the requisite  
14 number of inspections required?

15          A.    Yes.

16          Q.    Would you say just generally that  
17 motor carrier inspections are to protect the  
18 Ohio traveling public?

19          A.    Yes.

20          Q.    How many inspections do you perform  
21 on average within a year?

22          A.    Within a year at least 750 as the  
23 minimum.

24               MR. BEELER:  May I approach  
25 the witness, your Honor?



1 ATTORNEY EXAMINER WALSTRA: You may.

2 MR. BEELER: I have what has been  
3 marked as Staff Exhibit 1. And this is the  
4 Vehicle/Examination Report, and this is dated,  
5 the inspection date was December 5th, 2016 with  
6 the driver name Clifford Neely, carrier name  
7 also Clifford Neely.

8 (EXHIBIT HEREBY MARKED FOR  
9 IDENTIFICATION PURPOSES)

10 HEARING OFFICER WALSTRA: So marked.

11 MR. BEELER: Thank you.

12 Q. Inspector Drake, do you recognize  
13 this document?

14 A. Yes, I do.

15 Q. What is it?

16 A. That is a copy of our Driver/Vehicle  
17 Examination Report.

18 Q. Is this document a Patrol record?

19 A. Yes.

20 Q. Is it keep in the ordinary course of  
21 business?

22 A. Yes, it is.

23 Q. And it's the practice of the Patrol  
24 to make this report on each inspection; correct?

25 A. Yes.

1 Q. At the time did you report on  
2 matters observed pursuant to a duty imposed by  
3 law to which there was a duty by you to report?

4 A. Yes.

5 Q. Is this document in the same  
6 condition substantially as when you prepared it?

7 A. Yes, it is.

8 Q. Was the reason for you preparing  
9 this report of inspection of a motor carrier  
10 vehicle operated by Clifford Neely?

11 A. Yes, sir.

12 Q. Okay. Do you remember that  
13 inspection?

14 A. I sure do, yes, I do.

15 Q. So who is the driver listed on the  
16 report?

17 A. Clifford Neely, Clifford R. Neely.

18 Q. And Mr. Neely is here today;  
19 correct?

20 A. Yes, he is.

21 Q. Does the driver get a copy of this  
22 report at the stop?

23 A. Yes, he does.

24 Q. And you gave him that copy?

25 A. Yes.

1           Q.    So, I noticed that both the carrier  
2           and the driver are Clifford Neely.  So this is  
3           an owner/operator situation?

4           A.    Yes.  It is.

5           Q.    Okay.  And this violation or  
6           the violations that we are going to talk about  
7           here in a short while, they would be carrier  
8           violations?

9           A.    Yes.

10          Q.    There are violations noted on this  
11          report; correct?

12          A.    Yes.  There is two violations.

13          Q.    Just what are they?

14          A.    The first violation is insufficient  
15          tiedown straps for the load.  And the other one  
16          is violation of operating without a DOT permit.

17          Q.    We are going to talk about the first  
18          violation, which is the 49 CFR 393.110(b) with  
19          the tiedowns.  So, the insufficient tiedowns for  
20          forward movement.  You observed Mr. Neely with  
21          insufficient tiedowns; correct?

22          A.    Yes, I did.

23          Q.    How did you observe that?  Tell me  
24          the story from that day.

25          A.    The story from that day was I was

1 working Cuyahoga County. I was on Interstate  
2 480 at the time. I received a call from one of  
3 my fellow employees. A Cleveland Police Officer  
4 had called him and asked him to come perform an  
5 inspection, but he wasn't in the area. So he  
6 called me and asked me if I could go meet this  
7 Cleveland Police Officer to conduct an  
8 inspection.

9 Q. Just interrupt one second. Is that  
10 common for another officer, inspector, to call  
11 you to do a motor carrier inspection?

12 A. Yes, if they are not in the area  
13 they will try to get someone else to come and do  
14 it.

15 Q. Continue with your story. Thank  
16 you.

17 A. So, I asked him about the  
18 inspection, what was going on. He said that at  
19 the time the gentleman -- that the officer had  
20 an oversized load pulled over. And I think it  
21 was Bessemer.

22 I said, okay, I will go meet with  
23 him. So I left my area and went inside the City  
24 of Cleveland to Bessemer. I got on Bessemer,  
25 city street, and the load was on the city street

1 and there was a Cleveland Police Officer there.

2 I got out of the car, talked to the  
3 police officer, asked him what's going on. He  
4 said that what he usually does, he usually sits  
5 on Interstate 90, he said, because he has a  
6 history of seeing oversized loads travel on  
7 Interstate 90 and will travel off of the  
8 Interstate as a shortcut route to where they are  
9 supposed to drop their load off.

10 I said, so is that what you have  
11 here? Like, yes, he said. And the gentleman  
12 doesn't have a permit. I said, okay. Well, I  
13 will do an inspection on it.

14 So, came up, I addressed Mr. Neely,  
15 talked to Mr. Neely. During our conversation I  
16 asked -- I told him I was going to conduct an  
17 inspection. Told him I was going to do a Level  
18 2 inspection, which is a walk-around inspection.  
19 And actually inspect driver's credentials and  
20 you do a walk-around inspection on the truck  
21 itself. Not as detailed when you get up  
22 underneath doing a Level 1 where you check the  
23 brakes.

24 Q. Okay.

25 A. I asked Mr. Neely about the permit

1 because I saw the load and it was an oversized  
2 load. If I can remember it looked like an  
3 I-beam.

4 And I noticed that the way the load  
5 was positioned on the header, like a flatbed  
6 trailer. And I noticed the way the load was  
7 positioned on the trailer up at the front of the  
8 trailer near the tractor itself there was a  
9 overhand of the load. So there was no bulkhead.  
10 A bulkhead is actually on the trailer, it's a  
11 wall between the tractor and the trailer to  
12 prevent the load, if there was a shift in the  
13 load, to prevent the load from traveling from  
14 the trailer up into the tractor itself. It  
15 would actually hit a wall. Because I noticed  
16 there was no wall there and there was a little  
17 overhang.

18 Q. That's also called a bulkhead?

19 A. It's also called a bulkhead.

20 Q. Okay.

21 A. So I asked Mr. Neely about the  
22 permit, do you have a permit? He told me he  
23 didn't have a permit on him. I asked would you  
24 produce the permit. And he said he didn't have  
25 a permit.

1                   And I believe Mr. Neely told me that  
2     the permit was at the office, if I can remember,  
3     I believe he said the permit was at the office.

4                   I said okay. So then I looked at  
5     his load and I explained to him about the load.  
6     He had tiedowns on his load. He had tiedowns,  
7     but what he didn't have is that the law states  
8     and the regulations state when you have a load  
9     that is over 10 feet long and there is no  
10    bulkhead on the trailer you have to have at  
11    least 2 tiedowns at the beginning of that load,  
12    and then you are supposed to have one tiedown  
13    every 10 feet after.

14                  And in the front he didn't have two  
15    tiedowns, he just had the one tiedown. So I  
16    explained that to him. That was a violation  
17    right there. It wasn't a violation that he  
18    didn't have straps, he just didn't have enough  
19    at the front of his load, didn't have two.

20                  Q.    How long would you say the beam was?

21                  A.    Oh, shoot. It was a long beam. It  
22    was, I don't know, it was longer than  
23    the trailer itself.

24                  Q.    Okay. So, he did have a number of  
25    straps on there?

1           A.    Yes.

2           Q.    But the critical issue here is that  
3 first 10 feet of the load only had one.

4           A.    Just had one instead of two.

5           Q.    And then he had one and then he did  
6 have one every additional feet, but the point  
7 here today is he didn't have two within  
8 the first 10 feet which was required?

9           A.    Exactly, yes.

10          Q.    Anything else?

11          A.    And, I mean, he was pretty  
12 cooperative at the scene. We talked about it,  
13 he didn't really object to anything. And so I  
14 explained to him I was going to do the  
15 inspection.

16                   And I also stated to him that it was  
17 going to be an out of service violation. So I  
18 said, well, where are you taking your load to?  
19 He is like just right up the street there,  
20 which actually was just right up the street  
21 maybe about a block, block and a half, two at  
22 the most and he was kind of blocking the street.

23                   I said, okay. So I conducted  
24 the inspection, then did the inspection, but  
25 while I was conducting the inspection I think



1 the Cleveland Police Officer, he left the scene.

2 So it was just he and I at the scene.

3           Once I had finished with  
4 the inspection I stated to him that he was going  
5 to be out of service. Seeing as though he was  
6 blocking that city street, cars going around  
7 left of center to pass us, I told him what I  
8 will do is escort you up the street to where you  
9 are going to drop your load off, so that way you  
10 can at least have a place you can drop your  
11 load, we can clear the street. And that's what  
12 we did. We went up there to where he dropped  
13 his load off. Once we got him to the parking  
14 lot I talked to him for a little short time  
15 after that, then I turned around and left.

16           Q. So just looking at your report here,  
17 and again the first violation here, could you  
18 read, in the violation description, can you read  
19 just what you had noted there?

20           A. "Insufficient tiedowns to prevent  
21 forward movement for load not blocked by  
22 headerboard, bulkhead, or other cargo. Only one  
23 strap."

24           Q. By only one strap there you don't  
25 mean only one strap for the whole load, you mean

1     only one strap in the first 10 feet?

2             A.     Only one strap in the first 10 feet.

3             Q.     Okay. And you completed this, you  
4     are the one that entered that information in  
5     there; right?

6             A.     Yes. I put down the first entry,  
7     this code, everything automatically populates  
8     except for the only one strap.

9             Q.     And you put that information in  
10    there the day of the stop; right?

11            A.     Yes.

12            Q.     And it is your opinion here today  
13    that this particular load required two straps in  
14    the first 10 feet; is that correct?

15            A.     Yes. Two straps.

16            Q.     And this carrier did not have two  
17    straps in the first 10 feet; correct?

18            A.     No, he did not.

19            Q.     And that two straps in the first 10  
20    feet of a load without a bulkhead, that is how  
21    you were trained when you took the certification  
22    course to become a motor carrier inspector;  
23    correct?

24            A.     Yes.

25            Q.     The training taught you that in a

1 load of this type that two straps were required  
2 in the front?

3 A. Yes.

4 MR. BEELEER: At this point, your  
5 Honor, I think it would be helpful to, I am not  
6 going to enter it in as an exhibit, but just to  
7 kind of walk through the actual code section.

8 ATTORNEY EXAMINER WALSTRA: Okay.

9 MR. BEELEER: I have a copy for  
10 everybody to look at here. I have both of the  
11 sections on here.

12 Q. So the section that we are dealing  
13 with here would be 393.110, and then go down to  
14 B and then you go down to 3; correct?

15 A. Yes.

16 Q. And that is the one that is  
17 highlighted on the sheet here; right?  
18 So B essentially deals with when there is a --  
19 "In the absence of a bulkhead or other cargo the  
20 load must be secured by at least" then 3 goes on  
21 to explain "2 tiedowns if the article is less  
22 than 10 feet and one additional tiedown for  
23 every 10 feet beyond the first 10 feet."

24 Is that your reading of it?

25 A. Yes.

1           Q.   And again, that is how you were  
2   taught, you were taught in training that in the  
3   absence of a bulkhead that this was  
4   the configuration that was required?

5           A.   Correct.

6           Q.   If you go to C, that would cover a  
7   situation where there is a bulkhead, then you  
8   only need one every 10 feet and not two in the  
9   first 10 feet; is that correct?

10          A.   Correct.

11          Q.   Okay. So just, you know, you don't  
12   remember the exact number of straps that Mr.  
13   Neely had on there; correct?

14          A.   No, I don't.

15          Q.   So just as an example, let's say it  
16   was 30 feet long, no bulkhead, he would have  
17   needed two in the first 10 feet?

18          A.   Right.

19          Q.   And then one from 10 to 20 and then  
20   one from 20 to 30?

21          A.   Yes.

22               MR. BEELEER: May I approach, your  
23   Honor?

24               ATTORNEY EXAMINER WALSTRA: You may.

25               MR. BEELEER: I would like to have

1 marked as Staff Exhibit 2, this is called the  
2 "Truck Drivers Guide Book." And this is a  
3 document that is a public document that's on the  
4 Highway Patrol's website, Department of Public  
5 Safety's website.

6 And this is just an excerpt of it.  
7 It's a 57-page document. I did the first -- up  
8 to the table of contents, then a couple of pages  
9 that were the appropriate section for Load  
10 Securement.

11 ATTORNEY EXAMINER WALSTRA: We will  
12 mark that Exhibit 2.

13 (EXHIBIT HEREBY MARKED FOR  
14 IDENTIFICATION PURPOSES)

15 Q. Do you recognize this document?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's a truck drivers guide book.  
19 It's a book -- quite often truck drivers will  
20 come in and ask do we have, and it gives them a  
21 guideline on the requirements they need to  
22 operate their motor vehicle.

23 Q. And this is something that is  
24 published on the State Highway Patrol website;  
25 is that correct?

1           A.    Yes, it is.  Published on the  
2 website and then we also have the actual books  
3 at our Patrol Post facility.

4           Q.    And this is a publicly available  
5 document for commercial motor vehicle drivers  
6 and carriers; correct?

7           A.    Yes.

8           Q.    It provides an interpretation, at  
9 least from the State Highway Patrol, of  
10 the Federal Motor Carrier regulations that Ohio  
11 has adopted; is that correct?

12          A.    Yes.

13          Q.    Okay.  If you could turn to --

14               MR. BEELEER:  And again, your Honor,  
15 I have just done the table of contents and then  
16 Page 33 and 34 which is the load securement  
17 section.

18          Q.    On Page 34, on the second, in the  
19 second there, that would be an interpretation of  
20 the relevant violation here; correct?

21          A.    Yes, it is.

22          Q.    And it states that "In the absence  
23 of a bulkhead," which would be about half, it  
24 says "if the article is longer than 10 feet in  
25 length 2 tiedowns for the first 10 feet and one

1 additional tiedown for each 10 feet of article  
2 length or fraction thereof beyond the first 10  
3 feet." Is that correct?

4 A. Yes, it does.

5 Q. And that corresponds with the  
6 training and your interpretation of the actual  
7 federal regulation; correct?

8 A. Yes.

9 Q. Okay. Back to the report, Staff  
10 Exhibit 1. So you commonly just as part of your  
11 job, you specifically look for unsecured cargo;  
12 is that correct?

13 A. Yes.

14 Q. So as a result of your observation  
15 on that day and your knowledge and expertise on  
16 the federal regulation, you cited the carrier  
17 for this violation; is that correct?

18 A. Yes, I did.

19 Q. So it is your testimony here today  
20 that the carrier had insufficient tiedowns for  
21 this particular load; correct?

22 A. Correct.

23 Q. Now turning to the second violation  
24 here, operating without the proper DOT permit  
25 under 49 CFR 392.2. Mr. Neely did not have a

1 proper DOT permit; correct?

2 A. No, he did not.

3 Q. How did you observe that?

4 A. I asked him for it, and I asked him  
5 for the permit. It was an oversized load, I  
6 asked for the permit and he was not able to  
7 produce that permit.

8 Q. Which permit did he need?

9 A. It's a permit for DOT to operate.  
10 On those permits a lot of permits will actually  
11 tell you exactly your route which you are  
12 supposed to run. And, I mean, he didn't even  
13 have that at all.

14 So, I am not sure what his route was  
15 supposed to be, if he was even allowed on that  
16 city street with that load. I just didn't know.  
17 There was no permit

18 Q. So, it is your opinion today that  
19 that permit was necessary here and he failed to  
20 produce it which was required?

21 A. Yes, it was.

22 Q. Just again, under the vehicle  
23 description, can you just read that, tell me a  
24 little bit about that?

25 A. The vehicle description?



1 Q. Yep. Under the second violation.

2 A. "Miscellaneous drivers license  
3 violation: Operating without a DOT permit."

4 Q. And again before the colon that  
5 would have been automatically derived from the  
6 computer system, but the information after that,  
7 the operating without a DOT permit, that would  
8 have been what you added in there when you  
9 completed those notes on the day of the  
10 inspection; correct?

11 A. Yes, I did.

12 Q. Did the driver of the truck, did he  
13 admit to the violation?

14 A. Right when I questioned him about it  
15 he stated he didn't have it with him to produce  
16 it, and if I remember he told me that the permit  
17 was at the office, there was a female at the  
18 office that actually had the permit.

19 Q. And he was required to produce it,  
20 have it in his cab, on his person that day;  
21 correct?

22 A. Yes.

23 Q. So it's your testimony that you  
24 observed Mr. Neely operating a commercial motor  
25 vehicle without the proper permit; correct?

1           A.     Correct.

2           Q.     Anything else that you can think of  
3     that would be important to tell the Hearing  
4     Officers here today, or the Commission, anything  
5     else that you can think of that would be  
6     important to note for this case?

7           A.     I think that pretty much sums it up.

8                     MR. BEELEER:  No further questions,  
9     your Honor.  At this point with this witness I  
10    would move for the admission of Staff Exhibits 1  
11    and 2 in the record.

12                    Again, I would object to any  
13    cross-examination of this witness being that  
14    this is a carrier violation and the rules of the  
15    Commission dictate that if you are representing  
16    an entity that you must be represented by  
17    counsel in order to do things like cross-examine  
18    a witness.

19                    And, again, and beyond that I would  
20    reserve Mr. Drake for rebuttal if necessary.

21                    ATTORNEY EXAMINER WALSTRA:  Okay.  
22    I have a few questions.

23                                 EXAMINATION

24    By Hearing Officer Walstra:

25           Q.     How close was the first strap?

1           A.    The first strap was right at the  
2 beginning of the trailer, at the front of the  
3 trailer. It was right where -- there are hooks  
4 on the side of the trailer. You can actually  
5 run a strap. So it was right at the front of  
6 the trailer.

7           Q.    How much was the overhang, I guess,  
8 from the -- you said there was an overhang in  
9 the front as well?

10          A.    Right. There was an overhang at the  
11 front, probably just like a few feet. It wasn't  
12 a -- maybe, if I can remember, maybe like two  
13 and a half, three feet at the most overhang.

14          Q.    So how close was the second strap?

15          A.    Then they were every ten feet.

16          Q.    Every ten feet after that?

17          A.    Yes.

18          Q.    Do you start the measurement at the  
19 load or at the trailer?

20          A.    The measurement for the straps?

21          Q.    Yes.

22          A.    At the straps.

23          Q.    At the straps?

24          A.    I measure the distance between the  
25 straps.

1           Q.    But in terms within the first 10  
2 feet you measure at the start of the load or  
3 the trailer for the straps?

4           A.    I start at the -- on that particular  
5 one I start at the front of the trailer because  
6 that overhang, there is no way you can put a  
7 strap on that overhang. So I start at the front  
8 of the trailer.

9           Q.    So ten feet from the start of  
10 the trailer?

11          A.    Yes. From the front of the trailer  
12 where a bulkhead would be, then I measure all  
13 the way back.

14          Q.    So the first strap was right at the  
15 edge?

16          A.    The first strap was right at the  
17 front.

18          Q.    Second one was like 10 feet beyond  
19 that?

20          A.    Ten feet beyond that. And then  
21 another one ten feet beyond that one.

22          Q.    But in your mind, it sounds like you  
23 are saying one at one foot, and one at 10 feet?  
24 He needs a couple more?

25          A.    Right. Exactly. At the beginning

1 of his load where he had the one strap, seeing  
2 as though he did not have a bulkhead to stop  
3 the load from moving forward, he is required to  
4 have two straps instead of one.

5 Q. How close do they need to be  
6 together?

7 A. They are together, like right next  
8 to each other.

9 A. Right next to each other?

10 A. Right.

11 Q. That's what your training says, they  
12 have to be right next to each other?

13 A. Well, it doesn't say exactly how  
14 close they have to be, but they have to be  
15 within 10 feet of each other.

16 Q. Okay.

17 A. But most trucks you see they have  
18 one strap right next to that strap, then another  
19 tiedown right next to it.

20 Q. Did you take any pictures at the  
21 scene?

22 A. No, I did not.

23 ATTORNEY EXAMINER WALSTRA: Mr.  
24 Neely, do you have any questions?

25 MR. NEELY: Can I ask him a

1 question?

2 ATTORNEY EXAMINER WALSTRA: I am  
3 asking do you have any questions?

4 MR. NEELY: Yes.

5 MR. BEELER: Is my objection  
6 overruled or --

7 ATTORNEY EXAMINER WALSTRA: I want  
8 to see if we get to that point first. At this  
9 point I think I am going to give him some  
10 leeway, being an owner/operator I will let you  
11 ask some questions.

12 MR. NEELY: Okay.

13 CROSS-EXAMINATION

14 By Mr. Neely:

15 Q. You remember that day; right?

16 A. Yes.

17 Q. Okay. Now, was this trailer a  
18 regular trailer? Or was it a trailer that  
19 extends out?

20 A. What do you mean extends out?

21 Q. Let me explain. Here is a normal  
22 trailer. These papers represent a trailer. Was  
23 it a trailer that will stretch out so it can go  
24 longer?

25 A. I can't remember if you had an

1 extended trailer or not.

2 MR. NEELY: Can I say something?

3 ATTORNEY EXAMINER WALSTRA: You will  
4 have your chance to testify.

5 MR. NEELY: Okay. And that's about  
6 the only question I got because I know what I  
7 had and will state that when I am allowed to say  
8 it.

9 ATTORNEY EXAMINER WALSTRA: Okay.  
10 Anything else?

11 MR. BEELEER: No, your Honor.

12 ATTORNEY EXAMINER WALSTRA: All  
13 right. Thank you, Mr. Drake. You are  
14 discussed. And we will admit Exhibits 1 and 2.

15 (EXHIBITS HEREBY ADMITTED INTO  
16 EVIDENCE)

17 MR. BEELEER: Are there objections to  
18 Staff Exhibit 1 and 2?

19 ATTORNEY EXAMINER WALSTRA: He is  
20 without counsel. Those will be admitted

21 MR. BEELEER: Thank you, your Honor.  
22 At this time, Your Honor, Staff would call Rod  
23 Moser to the stand.

24 (WITNESS SWORN)

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ROD MOSER

called as a witness, being first duly sworn,  
testified as follows:

ATTORNEY EXAMINER WALSTRA: Please  
be seated.

DIRECT EXAMINATION

By Mr. Beeler:

Q. Good morning, Mr. Moser.

A. Good morning.

Q. For the record please state your  
full name.

A. My name is Rod Moser.

Q. Where are you employed?

A. With the Public Utilities Commission  
of Ohio, 180 East Broad Street, Columbus, Ohio  
43215.

Q. What is your position at the  
Commission?

A. I am the Chief of the Compliance  
within the Transportation section.

Q. How long have you been in this  
position?

A. Since March 20th of this year.

Q. How long have you been in the  
business maybe in other capacities in commercial



1 motor vehicle duties?

2 A. I have had contact with commercial  
3 motor vehicles in a enforcement capacity for  
4 roughly 30 years.

5 Q. Back to your current duties, what  
6 are they?

7 A. My job is to oversee the assessment  
8 of civil forfeiture assessment and hearing  
9 process related to roadside inspections, and  
10 compliance review of commercial trucking  
11 companies.

12 Q. What sort of training do you have in  
13 this area?

14 A. I am North American Standard  
15 certified A and B, and just 30 years of Highway  
16 Patrol Trooper.

17 Q. Just generally explain how you and  
18 the Commission determines forfeitures in cases.

19 A. Forfeitures are loosely based on the  
20 Commercial Vehicle Safety Alliance guidelines.  
21 They are divided -- violations are divided into  
22 five groups. Some of those groups have no fines  
23 associated to them whatsoever. Then others are  
24 fined according to the seriousness of  
25 the offense.

1                   Those groups are also broken down  
2                   into basically driver violations and carrier  
3                   violations.

4                   Q.     And then from there then dollar  
5                   amounts are then attributed to the various  
6                   violation; is that correct?

7                   A.     Yes, that's correct

8                   Q.     Then does the Commission apply that  
9                   process uniformly to everyone that is involved  
10                  with an inspection report?

11                  A.     Yes. It's all an automated process.

12                  MR. BEELEER: Okay. Can I approach  
13                  the witness, your Honor?

14                  ATTORNEY EXAMINER WALSTRA: You may.

15                  MR. BEELEER: I would like to have  
16                  marked as Staff Exhibit 3 the Notice of  
17                  Preliminary Determination, and that was sent to  
18                  Mr. Clifford Neely, and it is dated March 8th,  
19                  2017.

20                  ATTORNEY EXAMINER WALSTRA: So  
21                  marked.

22                  (EXHIBIT HEREBY MARKED FOR  
23                  IDENTIFICATION PURPOSES)

24                  MR. BEELEER: Thank you.

25                  Q.     Do you recognize this document?

1 A. I do.

2 Q. What is it?

3 A. What we refer to as a Notice of  
4 Preliminary Determination. It is a document  
5 sent to the Respondent following an unsuccessful  
6 attempt to come to a resolution in a phone  
7 conference.

8 Q. Did you review this document in  
9 preparation for the hearing today?

10 A. I did, yes.

11 Q. Is this document a Commission  
12 record?

13 A. Yes, it is.

14 Q. Kept in the ordinary business of the  
15 Commission?

16 A. Yes, sir.

17 Q. Explain how the civil forfeiture in  
18 this case was derived.

19 A. Well, the miscellaneous driver's  
20 license violation is a group zero violation, and  
21 all group zero violations have no forfeiture  
22 assigned to them. So there is a zero fine for  
23 that.

24 Then the cargo securement violation  
25 is a Group 1 offense. Any Group 1 violation is

1 a \$100 fine.

2 So the two together would just be  
3 \$100 total.

4 Q. Is that penalty consistent with the  
5 recommended fine schedule and recommended civil  
6 penalty procedure adopted by the Commercial  
7 Motor Vehicle Alliance?

8 A. Yes, it is.

9 Q. Again, what was that forfeiture  
10 amount?

11 A. \$100.

12 Q. And that is the correct forfeiture  
13 amount for this case?

14 A. Yes, it is.

15 Q. And you would recommend that amount  
16 to the Commission; correct?

17 A. Yes, sir.

18 Q. Anything else that you think would  
19 be important that you have not discussed here  
20 today that the Commission would -- that would be  
21 helpful for the Commission?

22 A. No, sir.

23 MR. BEELEER: Thank you. Your Honor,  
24 no further questions. At this time I would move  
25 for the admission of Staff Exhibit 3.

1                   ATTORNEY EXAMINER WALSTRA: Thank  
2 you. Do you have any questions, Mr. Neely?

3                   MR. NEELY: No.

4                   ATTORNEY EXAMINER WALSTRA: You are  
5 excused. Thank you, Mr. Moser. Staff Exhibit 3  
6 will be admitted.

7                   (EXHIBIT HEREBY ADMITTED INTO  
8 EVIDENCE)

9                   MR. BEELEER: Thank you. And we  
10 covered, Staff Exhibit 1 and 2 were admitted;  
11 correct?

12                  HEARING OFFICER WALSTRA: Yes.

13                  MR. BEELEER: I missed that. Sorry.  
14 At this time Staff has no further witnesses.  
15 Again, I would reserve Mr. Drake for rebuttal if  
16 necessary.

17                  ATTORNEY EXAMINER WALSTRA: Thank  
18 you. Mr. Neely, would you like to take  
19 the stand?

20                  MR. NEELY: Sure.

21                  ATTORNEY EXAMINER WALSTRA: Okay.

22                  (WITNESS SWORN)

23                  - - -

24                  CLIFFORD NEELY  
25 called as a witness, being first duly sworn,

1 testified as follows:

2 HEARING OFFICER: If you would  
3 please take a seat. This is your chance to give  
4 your side of the facts as to how you see things.  
5 Then Mr. Beeler will have a chance to ask you  
6 questions if he has any afterwards. So,  
7 whenever you are ready.

8 MR. NEELY: As I asked the Officer  
9 Drake what kind of trailer I had, he did not  
10 recall.

11 On this trailer, it is a trailer  
12 that extends, comes apart, you can put a longer  
13 load on it, and still have the load on the  
14 trailer.

15 So, in front of the trailer you have  
16 about 10 feet there where you can tie it down.  
17 We had two chains and a strap on that front part  
18 of the trailer. From the trailer where it  
19 extends out on the back we had additional six  
20 chains on that load.

21 So, there is a total of 8 chains on  
22 that load plus a strap, on that entire load.

23 EXAMINATION

24 By Hearing Officer Walstra:

25 Q. Where were the chains?

1           A.    In the front, like I say, in the  
2   front there was a strap and then about a foot  
3   behind that strap, whatever, there was a chain,  
4   and then before where the trailer starts to  
5   separate there was another chain right there.

6                    Like you got -- it stretches out,  
7   but where the bed comes back a tiedown again.  
8   That is where we had another chain and then  
9   every so far apart going back through. Like I  
10   say, the back part of the trailer we had 6  
11   chains on that load. And there is -- that back  
12   bed portion where you can put a load was roughly  
13   38 feet long of that bed surface.

14           Q.    The trailer was 38 feet long?

15           A.    The back portion of that. When it  
16   stretches out there is a flat part where you tie  
17   down is 38 feet of space there that you can tie  
18   down to.

19           Q.    So I can get the picture clear,  
20   there is a strap right at the front, front of  
21   the trailer, then two chains after that?

22           A.    Two chains on the front portion of  
23   the trailer, the flat surface of the trailer.

24           Q.    And you said that was 10 feet, all  
25   three of those?

1 A. Yes, sir.

2 Q. They went over the load?

3 A. Yes.

4 Q. Anything else?

5 A. No. That is basically what we are  
6 here about, the secure. That is why I felt I  
7 was within the law with all the chains we had on  
8 the load.

9 ATTORNEY EXAMINER WALSTRA: Thank  
10 you. Mr. Beeler.

11 MR. BEELER: Yes. Just a few  
12 questions for you here.

13 CROSS-EXAMINATION  
14 By Mr. Beeler:

15 Q. You were operating, you were the  
16 only driver operating the vehicle on that day;  
17 correct?

18 A. Yes.

19 Q. Okay. And you are an  
20 owner/operator?

21 A. Yes.

22 Q. And you are here today disputing  
23 this securement violation; correct?

24 A. That's right.

25 Q. Not the permit violation?



1 A. No.

2 Q. Inspector Drake gave you a copy of  
3 the report on the day of the inspection?

4 A. Yes. Yes. He gave me a copy and  
5 then he said he would mail me one because of the  
6 violation he put on was the proper one, he had  
7 to look. He didn't know. I says okay. I will  
8 call you tomorrow. He couldn't find something  
9 in his computer that day. I said not a problem.

10 He said is this your current  
11 address? I said, yes, it is. So I will mail  
12 you the correct one with the correct violation  
13 or whatever it was.

14 Q. He explained the violation at the  
15 stop?

16 A. Yes, he explained the violation.  
17 He just didn't have the right code at that time.  
18 He said he would mail me the correct one that  
19 was correct.

20 Q. And the beam that you were  
21 transporting, do you know how long it was?

22 A. 60 feet.

23 Q. 60 feet. And that was all one  
24 piece; correct?

25 A. Yes.

1 MR. BEELEER: If I could have a  
2 second, your Honor.

3 ATTORNEY EXAMINER WALSTRA: Sure.

4 MR. BEELEER: Nothing further, your  
5 Honor.

6 ATTORNEY EXAMINER WALSTRA: Thank  
7 you. All right. Thank you, Mr. Neely.

8 MR. BEELEER: I will ask for just  
9 briefly to call Mr. Drake back for rebuttal.

10 ATTORNEY EXAMINER WALSTRA:  
11 Certainly.

12 MR. BEELEER: If your Honor allows.

13 - - -

14 ROD MOSER

15 recalled as a witness, being first duly sworn,  
16 testified as follows:

17 HEARING OFFICER WALSTRA: You are  
18 still under oath.

19 REDIRECT EXAMINATION

20 By Mr. Beeler:

21 Q. You just heard some testimony from  
22 Mr. Neely about an extender-type trailer. Do  
23 you recall that type of trailer on the day of  
24 the inspection?

25 A. Yes.

1           Q.    Okay.  Let's say there was an  
2   extender-type trailer.  Would that make a  
3   difference in your inspection or violation?

4           A.    No.  That wouldn't make a difference  
5   in the violation at all.  It would just prove  
6   there was an oversized load for that trailer,  
7   oversized load.

8           Q.    It's still your testimony even with  
9   that type of trailer that two chains would have  
10  been needed in the first 10 feet of the trailer  
11  regardless; correct?

12          A.    Yes, exactly.  Two straps at the  
13  front of the load.  Yes.

14          Q.    Mr. Neely also testified that he had  
15  a strap and two chains up there in the front.  
16  Do you recall that?

17          A.    I don't recall that, because if that  
18  was the case I wouldn't have violated him for  
19  that violation.

20          Q.    So it's still your testimony today  
21  in the first ten feet of the trailer there was  
22  one?

23          A.    There was one strap.

24                MR. BEELEER:  One strap.  Nothing  
25  further, your Honor.

1                   ATTORNEY EXAMINER WALSTRA: Thank  
2 you. Mr. Neely, in reference to those couple  
3 questions do you have any further questions?

4                   MR. NEELY: No.

5                   ATTORNEY EXAMINER WALSTRA: Thank  
6 you, Mr. Drake. Anything further?

7                   MR. BEELER: No, your Honor.

8                   ATTORNEY EXAMINER WALSTRA: Okay.  
9 Well, the Commission will take this under  
10 advisement and issue an order in due course. We  
11 are adjourned.

12                  MR. BEELER: I was going to request  
13 a short closing argument.

14                  ATTORNEY EXAMINER WALSTRA: Go  
15 ahead, Mr. Beeler.

16                  MR. BEELER: Thank you, Your Honor,  
17 for permitting me to make this statement.

18                  The evidence shows here by a  
19 preponderance of the evidence that the driver,  
20 driver, carrier, Mr. Neely, was in violation of  
21 49 CFR 392.10 (b) (3) for insufficient tiedowns  
22 to prevent forward movement.

23                  Inspector Drake has expertise in  
24 motor vehicle inspection and has prepared a  
25 report and testified that the driver violated

1 this section.

2 He testified that in his  
3 professional opinion that Mr. Neely was in  
4 violation of this section. Because the  
5 regulation requires that in the absence of a  
6 bulkhead, that this is when there is no wall or  
7 bulkhead in the front of the truck, that two  
8 tiedowns in the first 10 feet of the vehicle are  
9 required, and Inspector Drake only observed one.

10 Inspector Drake was trained, trained  
11 that two straps were in the first ten feet.  
12 His interpretation of the federal regulations is  
13 that two tiedowns are needed in the first 10  
14 feet. And the State Highway Patrol also  
15 interprets the regulation that way through their  
16 truck drivers guide book, which is available  
17 publicly to all drivers and carriers.

18 And just overall the policy here is  
19 that when there is no bulkhead or wall in the  
20 front of the truck to prevent forward movement  
21 that more than one strap is necessary in the  
22 front. You need two straps to serve as, you  
23 know, what a bulkhead would do to prevent  
24 forward movement.

25 And then the other violation

1 Inspector Drake testified in his professional  
2 opinion Mr. Neely was operating a motor vehicle  
3 as a carrier in violation of 392.2 and was  
4 operating without the proper DOT permits.

5 Inspector Drake just generally  
6 testified that these violations are issues of  
7 safety for the state of Ohio. Staff witness  
8 Moser testified the forfeiture amount was  
9 consistent with the recommended fine schedule  
10 and recommended penalty procedure of the  
11 Commercial Motor Vehicle Alliance.

12 Staff applies that process to  
13 everyone and uses that method that is nationally  
14 recognized by the U.S. Department of  
15 Transportation. Thank you.

16 ATTORNEY EXAMINER WALSTRA: All  
17 right. Do you have anything?

18 MR. NEELY: Just one question.  
19 When they say there is no bulkhead to prevent  
20 forward movement, then what is the purpose of  
21 putting a headache rack on the truck to prevent  
22 forward movement?

23 MR. BEELEER: I will object. Not a  
24 statement, it's a question.

25 ATTORNEY EXAMINER WALSTRA: Well, it

1 will be left as rhetorical.

2 MR. BEELER: Thank you.

3 ATTORNEY EXAMINER WALSTRA: But, it  
4 will be taken under advisement, and we are  
5 officially adjourned. Thank you.

6 (At 10:55 A.M. the hearing was  
7 concluded)

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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 August  
8, 2017, and carefully compared with my original  
stenographic notes.

\_\_\_\_\_  
Michael O. Spencer,  
Registered Professional  
Reporter.

- - -



**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 17-1097-TR-CVF**

Summary: Transcript In the Matter of Clifford R. Neely Notice of Apparent Violation and Intent to Assess Civil Forfeiture, hearing held on August 8, 2017. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.