

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of McCutcheon :
Enterprises, Inc. Notice : Case No.
of Apparent Violation and : 21-492-TR-CVF
Intent to Assess Forfeiture. :

- - -

PROCEEDINGS

Before Jim Lynn, Attorney Examiner, held via
WebEx, on Tuesday, February 15, 2022, at 10:00
A.M.

- - -

Armstrong & Okey, Inc.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

2 Mr. Brian Copeland
3 250 Park Road
4 Apollo, Pennsylvania 15613

5 Appearing Pro se.

6 Ms. Jodi Bair
7 Assistant Attorney General
8 30 East Broad Street, 26th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the
11 Public Utilities Commission
12 of Ohio.

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STAFF WITNESSES

Bradley Long 15

Brian Copeland 21

Calvin McCutcheon 22

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Tuesday Morning,
February 15, 2022.
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ATTORNEY EXAMINER: The Public
Utilities Commission of Ohio has assigned for
hearing at this time Case No. 21-492-TR-CVF,
McCutcheon Enterprises Notice of Apparent
Violation and Intent to Assess Forfeiture.

This hearing is taking place
electronically via WebEx. I am Jim Lynn, I am
the Attorney Examiner assigned to hear this
case. And at this time we will have the
appearances of the parties beginning with the
Ohio Attorney General's office.

MS. BAIR: Thank you, your Honor.
On behalf of the Staff of the Public Utilities
Commission of Ohio, Dave Yost, Attorney General,
John Jones, Section Chief, Jodi Bair, Assistant
Attorney General, 30 East Broad Street,
Columbus, Ohio 43215.

ATTORNEY EXAMINER: Fine. Thank
you. And for McCutcheon Enterprises, Mr.
Copeland. If you would just state your name and
address, please, and who you represent.

MR. COPELAND: My name is Brian

Copeland, I am the field service manager for
McCutcheon. The address is 250 Park Road,
Apollo, Pennsylvania 15613.

ATTORNEY EXAMINER: Thank you.
Okay. Our proceedings today, we will start with
the Ohio Attorney General's office. And, Ms.
Bair, please go ahead.

MS. BAIR: Thank you, Your Honor.
Staff would like to call Officer Mularcik as its
first witness.

(WITNESS SWORN)

ATTORNEY EXAMINER: Thank you. Go
ahead, Ms. Bair.

MS. BAIR: Thank you, Your Honor.

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

DIRECT EXAMINATION

By Ms. Bair:

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

A. Trooper Timothy Mularcik.

Q. And where are you employed?

A. With the Ohio State Highway Patrol

1 at the time of the inspection with the Columbus
2 District Commercial Enforcement Section.

3 Q. And what is your position right now
4 with the Patrol?

5 A. As of now I am assigned at the
6 General Headquarters with Commercial
7 Enforcement.

8 Q. How long have you been with
9 the Patrol?

10 A. Ohio Patrol 17 years.

11 Q. And could you please tell me briefly
12 what your duties are as a Highway Patrolman?

13 A. As it relates to this case
14 enforcement of general traffic, motor vehicle
15 laws under Ohio Revised Code. And as far as the
16 Commission's regulations under PUCO and USDOT.

17 Q. Thank you. Do you have any
18 training specific to this, like certification or
19 is there continuing education about the rules
20 that you are speaking of?

21 A. I do. In order to initially certify
22 we had multiple 40-hour work weeks at the Ohio
23 Patrol academy where we are certified by most
24 cases Inspector Fedderen and other instructors
25 for the North American Standards Part A, Part B,

1 hazmat and things of the sort.

2 MS. BAIR: Thank you. And, your
3 Honor, I circulated this morning what I would
4 like to have marked as Staff's Exhibit 1.

5 (EXHIBIT HEREBY MARKED FOR
6 IDENTIFICATION PURPOSES)

7 MS. BAIR: I assume everyone has
8 that. I don't know if, Mr. Mularcik, you are
9 able to access that.

10 THE WITNESS: I do have it.

11 MS. BAIR: Perfect.

12 ATTORNEY EXAMINER: Mr. Copeland, I
13 believe you received that also; am I right?

14 MR. COPELAND: Yes.

15 ATTORNEY EXAMINER: Okay. The
16 e-mail from Ms. Bair. Okay. Thank you. Go
17 ahead.

18 MS. BAIR: Thank you.

19 Q. Do you have, Officer, what I have
20 marked as Staff Exhibit 1?

21 A. I do.

22 Q. And what is this document?

23 A. This is a report from my inspection.
24 The Report number is OH1575002638. It indicates
25 I performed this inspection on March 4th of '21

1 at approximately 7:35 in the morning ending
2 around 8:25.

3 Q. And is this report kept as a normal
4 matter of business as part of your job as a
5 Patrolman?

6 A. It is. This is a standard report
7 that we complete through the Aspen program to
8 document all roadside inspections.

9 Q. As you are looking at this exhibit,
10 is it in the same condition or substantially the
11 same as you created it the day the report was
12 made?

13 A. It is.

14 Q. And you gave the date and time
15 earlier; didn't you?

16 A. Yes, ma'am. March 4th, between 7:35
17 and 8:25 A.M.

18 Q. Thank you. And what was the reason
19 for you creating this report?

20 A. My initial observation of
21 the vehicle being a hazmat placarded vehicle.
22 I was on Interstate 270 in Franklin County out
23 of Columbus, Ohio, and stopped it for standard
24 roadside DOT inspection.

25 Q. And what is the violation noted in

1 this report?

2 A. The violation noted in this report
3 specifically is placard is damaged,
4 deteriorated. And specifically in this case
5 being deteriorated and then faded.

6 Q. Thank you. And I would like to
7 start moving through Staff Exhibit 1, and I
8 didn't add page numbers to it because I didn't
9 want to threaten any authenticity, so if we
10 could please go down -- how am I going to do
11 page numbers? Let's go down to the first
12 placard which should be in Staff Exhibit 1.

13 A. The first placard I come to in the
14 sequence of photos is directly after the
15 identifiers of the company markings and the VIN
16 on the door pillar.

17 There is a photo of a placard
18 directly after it.

19 Q. Thank you. And could you tell me,
20 is that placard in violation?

21 A. That placard is not. That appears
22 by the orientation and whatnot that that is the
23 placard displayed on the front of the vehicle at
24 the bulkhead area of the trailer.

25 Q. And that placard does not violate

1 the CFR. Can you tell me why it does not?

2 A. It's still a bright, clear, easily
3 and readily discernible and red. The numbers
4 were legible. The 3 at the bottom is still
5 legible. It is clear and quickly readily
6 identifiable as a red placard.

7 Q. And could we move down in the
8 exhibit, please, to another placard which is --

9 A. So in my order of sequence, directly
10 after that one I just spoke about there is a
11 photo of the VIN of the trailer. The photo
12 directly after it is another hazmat placard
13 which knowing my sequence order that I do photos
14 would have been the one on the driver's side of
15 the trailer.

16 Q. And is this placard, would you
17 consider to be in violation of the CFR 172?

18 A. I would. This one would have been
19 the one that prompted me to initially conduct
20 the traffic stop for the inspection. This
21 placard is no longer red, it's faded to a pink.
22 It's almost past pink, almost like a white hazy
23 color.

24 It's still discernible as 1268.
25 I can still see the 3 at the bottom. It's no

1 longer readily identifiable as a red flammable
2 placard.

3 Q. So this one you do consider to be in
4 violation of the 172?

5 A. Yes, ma'am.

6 Q. Thank you. Could we move on down in
7 the Exhibit to the next --

8 A. The next photo I have, it's a little
9 more closeup photo to more readily show that
10 faded color. And then beyond it, moved down to
11 the rear placard, pictures of the trailer
12 showing it to be a clearly red and identifiable
13 red flammable placard and an instance of a good
14 placard.

15 Q. And just for the record, we are
16 still in Staff Exhibit 1, we are on a placard
17 that is -- where is that taken from? What part
18 of the truck is that taken from? The back or --

19 A. This is taken from the rear. What
20 you see in the photo is the rear of the trailer.
21 You can see the tail lights. Where they load
22 and unload the hazmat. Right next to it is a
23 still red, good placard for 1268.

24 Q. So again we would not consider this
25 to be in violation?

1 A. No. This would be one instance of a
2 good placard.

3 Q. Thank you. And let's move on down.
4 I think we have the next placard.

5 A. The next placard would be on the
6 passenger side of the trailer. The forth
7 placard. And this one is another instance of a
8 violation. You can see the original color a
9 little bit around where the clips are, but again
10 also faded to a pink, in some areas almost to a
11 white, no longer readily identifiable as a red
12 flammable placard. The 3 is still legible, but
13 the color was faded well beyond a clear red,
14 almost into a pink and white state.

15 Q. Okay. Thank you. Does the driver
16 get a copy of this report?

17 A. The driver is given a copy of my
18 inspection violations and the report. They are
19 not given photos at the time of the inspection.
20 But they can see what I have taken photos of.
21 I do, I believe, a good job of indicating to
22 them what the violations are and whatnot.

23 MS. BAIR: Thank you. I have no
24 further questions for this witness, your Honor.

25 ATTORNEY EXAMINER: I have no

1 questions.

2 MS. BAIR: I move Staff Exhibit 1
3 into evidence.

4 ATTORNEY EXAMINER: Thank you. And
5 we will admit Staff Exhibit 1 into evidence
6 then.

7 (EXHIBIT ADMITTED INTO EVIDENCE)

8 ATTORNEY EXAMINER: Thank you.
9 Let's see. And, Ms. Bair, do you have any
10 additional witnesses?

11 MS. BAIR: Yes. I would call
12 Bradley Long as Staff's second witness, please.

13 ATTORNEY EXAMINER: And before we
14 get to Mr. Long, I will mention for our court
15 reporter that McCutcheon Enterprises is
16 incorporated and I had spoken to the company
17 representative, Brian McCutcheon, previously
18 before -- well, before the hearing, to say that
19 McCutcheon Enterprises would need to have an
20 attorney represent them if they wanted to
21 cross-examine Staff witnesses.

22 But as far as stating McCutcheon's
23 perspective as far as what the facts are for
24 the violation, Mr. McCutcheon could go ahead and
25 do that. Therefore, that's why we are not

1 allowing Mr. McCutcheon to ask any questions of
2 Trooper Mularcik, for that matter for Mr. Long
3 which we will go ahead and hear from now.

4 (WITNESS SWORN)

5 ATTORNEY EXAMINER: Please go
6 ahead, Ms. Bair.

7 MS. BAIR: Thank you, your Honor.

8 - - -

9 BRADLEY LONG

10 called as a witness, being previously duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Bair:

14 Q. Please state your full name for the
15 record.

16 A. Bradley E. Long.

17 Q. By who are you employed and what is
18 your position?

19 A. Currently employed by the Public
20 Utilities Commission of Ohio within
21 the Transportation Division. I am the Assistant
22 Chief of Compliance.

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

25 A. Since November of 2019.

1 Q. Before that what was your
2 occupation?

3 A. Prior that I was 26 years with the
4 Ohio State Highway Patrol. Twenty-four and a
5 half of that on the road as a road Trooper
6 enforcing Ohio Revised Code both on passenger
7 vehicles and commercial motor vehicles.

8 During that tenure I had ten years
9 with the crash reconstruction analysis where I
10 was trained in commercial motor vehicle
11 reconstruction techniques, brake inspection,
12 braking capabilities, control module download
13 technique applications.

14 The last two years with the Highway
15 Patrol spent with the licensing commercial
16 standards unit as first a commercial motor
17 vehicle enforcement Trooper where I was
18 certified to conduct inspections.

19 Q. Thank you. At your present job you
20 are Assistant Chief; is that correct?

21 A. That is correct.

22 Q. What are your duties in that
23 position?

24 A. Assist the Section Chief by
25 maintaining files in the compliance section, I

1 oversee the compliance officers day-to-day
2 operations, viewing prehearing conference
3 summaries, assist with processing files for
4 preparation of future actions, whether they be
5 hearings or Attorney General collections.

6 Also review and process compliance
7 letters that are sent out relating to
8 inspections and compliance reviews and just
9 maintaining the files in our compliance computer
10 system.

11 Q. Thank you. And regarding violations
12 that you currently are in charge, of what type
13 of training or certification, ongoing education,
14 do you have in this field?

15 A. Certified in North American
16 Standards Part A and Part B, general hazmat,
17 cargo tank, other bulk inspections, motor
18 carrier, school bus. PUCO in-service and on
19 the job training with the sales force program,
20 compliance forfeiture program and policies.

21 Still maintain all my certifications
22 with the exception of motor carrier and school
23 bus at this time.

24 MS. BAIR: Thank you. Your Honor, I
25 would like to have marked as Staff Exhibit 2 the

1 Notice of Preliminary Determination dated April
2 14th, 2021.

3 ATTORNEY EXAMINER: All right. We
4 will mark that as Staff Exhibit 2. Go ahead.

5 (EXHIBIT MARKED FOR THE PURPOSE OF
6 IDENTIFICATION)

7 Q. Mr. Long, do you have what has been
8 marked as Staff Exhibit 2 available to you?

9 A. Yes, ma'am, I do.

10 Q. And what is that document?

11 A. The Notice of Preliminary
12 Determination. That form is issued generally
13 after conference has been held with the
14 Respondent, in this case McCutcheon Enterprises,
15 Incorporated. Once that conference is held if a
16 settlement agreement can't be reached the
17 compliance officer generally will offer to issue
18 that Notice of Preliminary Determination form
19 letter.

20 This letter still gives them 30 days
21 to either pay the forfeiture amount, which in
22 this case is zero, there is no forfeiture for
23 the violation, or request an administrative
24 hearing within that 30-day period.

25 Q. And this document is sent to the

1 Respondent, McCutcheon Trucking; correct?

2 A. That's correct.

3 Q. Thank you. And this document, this
4 Notice of Preliminary Determination, is a
5 regular business record of the Commission?

6 A. That's correct.

7 Q. Could you please tell me the date on
8 this Notice of Preliminary Determination?

9 A. The date mailed on this form, April
10 14 is the date that this letter was mailed out.

11 Q. And this was regarding a violation,
12 am I correct, of 49 CFR 172.516; correct?

13 A. That is correct.

14 MS. BAIR: Thank you. Your Honor, I
15 have no more questions, and I would move Staff
16 Exhibit 2 into evidence.

17 ATTORNEY EXAMINER: I also have no
18 questions at this time. And we will admit Staff
19 Exhibit 2 into evidence.

20 (EXHIBIT HEREBY ADMITTED INTO
21 EVIDENCE)

22 MS. BAIR: Thank you, your Honor.

23 ATTORNEY EXAMINER: I believe you
24 have no further witnesses; am I correct?

25 MS. BAIR: You are correct.

1 ATTORNEY EXAMINER: Okay. Mr.
2 McCutcheon, I understand you have your company
3 president, or owner, Calvin McCutcheon, as well.

4 Mr. McCutcheon, what comments do you
5 have as far as the alleged violation? And I
6 will note that you had e-mailed to everyone some
7 photographs of the placards at issue this
8 morning, or yesterday actually. But at any
9 rate, Mr. McCutcheon, what comments do you have
10 as far as alleged violation goes.

11 MR. COPELAND: First off, thank you,
12 Your Honor, for taking the time --

13 ATTORNEY EXAMINER: Before you start
14 I will swear you in.

15 MR. COPELAND: My name is Brian
16 Copeland.

17 ATTORNEY EXAMINER: And Mr.
18 McCutcheon is the president. Okay. And, Mr.
19 McCutcheon, if you expect to speak I will swear
20 you in as well.

21 (WITNESSES SWORN)

22 ATTORNEY EXAMINER: Great. And
23 whichever of you wants to proceed go ahead.

24 Mr. Copeland, if you want to speak
25 go ahead, or Mr. McCutcheon, as the case may be.

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BRIAN COPELAND

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

DIRECT TESTIMONY

MR. COPELAND: Sure. First off I
thank you, your Honor, for taking the time and
everybody that's on the call. And, Mr.
Mularcik, thank you for your service, appreciate
the 17 years.

So, our kind of defense in this is
as Trooper Mularcik went through, the pictures
that I submitted are actually in the documents
that we already went through. We feel that the
placards are still -- you can still see the
flammable placard on the top of the placard, you
can still see the 3, you can see the number.
It's not damaged or obstructed.

And we still feel that the pink in
color is still identified as red, the hazard
placard, based on the other placards that are on
that trailer. You have green, yellow, white and
red. We feel that it's still easily identified
as a flammable placard for our case here.

ATTORNEY EXAMINER: Okay. And, Mr.

1 McCutcheon, do you have any comments to add?

2 - - -

3 CALVIN MCCUTCHEON

4 called as a witness, being previously duly
5 sworn, testified as follows:

6 DIRECT TESTIMONY

7 MR. MCCUTCHEON: Yes, your Honor.

8 Like Brian stated, the red color is recognized
9 as a flammable, combustible liquid under
10 172.500.

11 And the other hazard classes, are a
12 distinct distinction color difference, as Brian
13 had mentioned, orange for explosives, blue for
14 dangerous, green for non-flammable fuel.

15 So all the flammable class materials
16 are a red color. And there is no color matrix
17 applied to this regulation to show a standard
18 that it has to be this bright or this color.
19 And this is one of the heartaches that we have
20 as a transporter trying to stay compliant and
21 keep everybody thinking in a positive mind
22 pattern here.

23 And that is why the distinct colors
24 of corrosive being black and poisons being
25 white, oxidizers being yellow, the standards

1 aren't really -- those colors can't really be
2 mixed. And even if it is somewhat faded, it
3 still represents the flammable characteristic of
4 that waste stream.

5 And that is why we are just asking,
6 we recognize there is no fine, and we really
7 appreciate that, and no forfeiture.

8 The compliance of our overall CSA
9 scores though are very important to our company.
10 I have been in this business since 1947, we take
11 this very seriously and we are a very compliant
12 company and provide a very necessary service to
13 the industry. And we do it with the utmost
14 integrity in compliance.

15 And we just feel that this
16 violation, it could be excused and corrected on
17 our CSA score, it would be much appreciated.

18 ATTORNEY EXAMINER: I have no
19 questions. And, actually I will just ask this.

20 So, Mr. Copeland, you are saying
21 that the photos that you e-mailed today as
22 exhibits for the company were actually the same
23 photos that were in the Staff Exhibit; am I
24 correct?

25 MR. COPELAND: The photos that I

1 submitted were actually photos that I had taken,
2 but they are very representative to the photos
3 that were already in the exhibit.

4 ATTORNEY EXAMINER: So, they are
5 not -- the photos you submitted are not actually
6 from the vehicle that was stopped; am I correct?

7 MR. COPELAND: It is. As soon as
8 the vehicle came back I took those pictures
9 before we changed those placards out. So, they
10 are pretty much the exact same pictures that
11 Officer Mularcik had.

12 ATTORNEY EXAMINER: All right. So
13 the photos --

14 MR. COPELAND: Different cameras.

15 ATTORNEY EXAMINER: Different
16 cameras, but the same tanker truck, tanker
17 trailer?

18 MR. COPELAND: That's correct.

19 ATTORNEY EXAMINER: Okay. That's
20 fine. All right. Ms. Bair, do you have any
21 questions for either of these gentlemen?

22 MS. BAIR: I have no questions.
23 Thank you.

24 ATTORNEY EXAMINER: Okay. And so,
25 Mr. Copeland, then did you want to -- I assume

1 that you will ask that your photographs be
2 admitted into evidence?

3 MR. COPELAND: Yes. We would like
4 for our photos to be made as evidence as well.

5 ATTORNEY EXAMINER: Well, we will
6 then mark the photographs that Mr. Copeland
7 e-mailed as McCutcheon Exhibits 1 and 2.

8 (EXHIBITS HEREBY MARKED FOR
9 IDENTIFICATION PURPOSES)

10 ATTORNEY EXAMINER: And I have no
11 further questions. I appreciate everyone
12 participating today and persisting through any
13 of the technical issues to get connected.

14 Thank's to Micah Schmidt, our IT
15 person, for trying to get everyone on board, and
16 actually succeeded in doing so. And also Mr.
17 Long, Bradley Long, for contacting Trooper
18 Mularcik and for Trooper Mularcik for persisting
19 through getting through on your cell phone.

20 With that being said, I don't
21 believe there is any more to be asked, and
22 therefore, I would say we will close the hearing
23 for the day.

24 Everyone stay safe and stay well.
25 Have a good morning everybody.

1 (At 10:40 A.M. the hearing was
2 concluded)

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4
5 CERTIFICATE

6 I do hereby certify that the foregoing
7 is a true and correct transcript of the
8 proceedings taken by me in this matter on
9 February 15, 2022, and carefully compared with
10 my original stenographic notes.

11 _____
12 Michael O. Spencer,
13 Registered Professional
14 Reporter.

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**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/1/2022 1:01:20 PM

in

Case No(s). 21-0492-TR-CVF

Summary: Transcript February 15 2022 In the Matter of McCutcheon Enterprises, Inc. Notice of Apparent Violation and Intent to Assess Forfeiture. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.