



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

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***Hazardous Materials Safety Law
Division***

NOTICE OF PROBABLE VIOLATION

Date Issued: 11/21/22

PHMSA Case No.: 22-0181-SI-SW

Respondent: STS Electronic Recycling, LLC
402 S. Ragsdale Street, Suite 100
Jacksonville, TX 75766
ATTN: Steven Norton, President-CEO

No. of Alleged Violations: 2

Total Proposed Assessment: \$21,600

The Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you have violated certain provisions of the Federal hazardous materials transportation law, 49 U.S.C. § 5101 *et seq.*, and/or the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What are the maximum and minimum civil penalties that PHMSA can assess? Federal law sets a maximum civil penalty of \$81,993 (or \$191,316 if the violation results in death, serious illness or severe injury, or substantial destruction of property), and a minimum civil penalty of \$493 if the violation concerns training, for each violation of the Federal hazardous materials transportation law or the HMR. Each day of a continuing violation by a shipper or transporter of hazardous materials constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal hazardous materials transportation law or the HMR. Please refer to

Addendum B to this Notice for more information concerning these factors, which include corrective actions you take to attain and ensure compliance with the HMR.

How do I respond? You may respond to this Notice in any of three ways:

- (1) By paying the proposed assessment (49 CFR § 107.313(a)(1));
- (2) By sending an informal response, which can include a request for an informal conference (49 CFR § 107.313(a)(2)); or
- (3) By requesting a formal hearing (49 CFR § 107.313(a)(3)).

Details on these three options are provided in Addendum B to this Notice and also online at: (<https://www.phmsa.dot.gov/hazmat/field-operations/nopvresponses>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 CFR §§ 107.307 - 107.331.

When is my response due? You must respond within thirty (30) days from the date that you receive the Notice (49 CFR § 107.313(a)). I may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period (49 CFR § 107.313(c)). A response received out of time will not be considered. To assure timely receipt, **PHMSA strongly encourages you to submit your response by e-mail, fax, or express mail.**

What happens if I fail to respond? You waive your right to contest the allegations made in Addendum A to this Notice if you fail to respond within thirty (30) days of receiving it (or by the end of any extension). In that event, the Chief Counsel may find that you committed the violation(s) alleged in this Notice and assess an appropriate civil penalty.

What happens if PHMSA issues an Order assessing a civil penalty, and I fail to pay? If you fail to pay a civil penalty assessed by an Order, on the 91st day after the date of the Order you will be prohibited from conducting hazardous materials operations, in accordance with 49 CFR Part 109, Subpart E. If PHMSA issues a cease operations order and you continue to conduct hazardous materials operations, you may be subject to additional penalties, including criminal prosecution pursuant to 49 U.S.C. 5124. The prohibition shall continue until payment of the penalty has been made in full, or until PHMSA approves an acceptable payment plan.

The Case Exhibits will be supplied to you in a PDF format using DOT's Secure Large File Transfer System via the link in an email to follow, which will be active for the next 30 days. If receiving the Case Exhibits in electronic format creates an undue hardship for you, please contact me.

LAURA ELIZABETH
ULMER

Digitally signed by LAURA
ELIZABETH ULMER
Date: 2022.11.21
16:07:09 -05'00'

Laura Ulmer, Attorney

Enclosures: Addendum A
Addendum B
Addendum C

ELECTRONIC MAIL

GENERAL ALLEGATIONS

General Factual Allegations/Averments

1. On July 12, 2022, PHMSA's Investigator conducted an inspection at Respondent's facility in Jacksonville, Texas.
2. Wayne Larson, General Manager Safety Compliance, represented the company and provided necessary information and documentation.
3. Respondent is a shipper of Class 9 hazardous materials, specifically lithium-ion batteries.
4. As an offeror of hazardous materials, Respondent is a regulated entity subject to the HMR and to the jurisdiction of the Secretary of Transportation, PHMSA's Associate Administrator for Hazardous Materials Safety, and PHMSA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 CFR § 107.301).

SPECIFIC ALLEGATIONS

Probable Violation No. 1

Offering for transportation in commerce a hazardous material, UN 3480, Lithium-ion batteries, 9, PGI (damaged, defective) without hazmat shipping papers, package labels, package markings and authorized packaging, thereby creating an undeclared shipment of hazardous materials, in violation of 49 CFR §§ 171.2(a), (b), (c) & (e); 172.200(a); 172.300(a); 172.400; and 173.185(f)

Regulatory Standard

1. 49 CFR § 171.2(a) requires that each person who performs a function covered by the HMR must perform that function in accordance with the HMR.
2. Section 171.2(b) states that each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of the HMR, or an exemption or special permit, approval, or registration issued under the requirements of the HMR or under subchapter A of this chapter. There may be more than one offeror of a shipment of hazardous materials. Each offeror is responsible for complying with the requirements of the HMR, or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter, with respect to any pre-transportation function that it performs or is required to perform; however, each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform, and each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and

exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.

3. Section 171.2(c) states that each person who performs a function covered by or having an effect on a specification or activity prescribed in part 178, 179, or 180 of the HMR, an approval issued under the HMR, or an exemption or special permit issued under subchapter A of this chapter, must perform the function in accordance with that specification, approval, an exemption or special permit, as appropriate.
4. 49 CFR 171.2(e) requires that no person offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of the HMR or an exemption or special permit, approval, or registration issued under the HMR or subchapter A of this chapter.
5. Section 172.200(a) requires that, except as otherwise provided in this subpart, each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart.
6. Section 172.300(a) states that each person who offers a hazardous material for transportation shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.
7. Section 172.400(a) requires that, except as specified in §172.400a, each person who offers for transportation or transports a hazardous material in any of the following packages or containment devices, shall label the package or containment device with labels specified for the material in the §172.101 table and in this subpart.
8. Section 173.185(f) states that ***Damaged, defective, or recalled cells or batteries***. Lithium cells or batteries that have been damaged or identified by the manufacturer as being defective for safety reasons, that have the potential of producing a dangerous evolution of heat, fire, or short circuit (*e.g.*, those being returned to the manufacturer for safety reasons) may be transported by highway, rail or vessel only, and must be packaged as follows:
 - a. (1) Each cell or battery must be placed in individual, non-metallic inner packaging that completely encloses the cell or battery;
 - b. (2) The inner packaging must be surrounded by cushioning material that is non-combustible, electrically non-conductive, and absorbent; and
 - c. (3) Each inner packaging must be individually placed in one of the following packagings meeting the applicable requirements of part 178, subparts L, M, P, and Q of this subchapter at the Packing Group I level:

- i. (i) Metal (4A, 4B, 4N), wooden (4C1, 4C2, 4D, 4F), or solid plastic (4H2) box;
- ii. (ii) Metal (1A2, 1B2, 1N2), plywood (1D), or plastic (1H2) drum; or
- iii. (iii) For a single battery, and for a single item of equipment containing cells or batteries, the following rigid large packagings are authorized:
 - 1. (A) Metal (50A, 50B, 50N);
 - 2. (B) Rigid plastic (50H);
 - 3. (C) Plywood (50D); and
- d. (4) The outer package must be marked with an indication that the package contains a “Damaged/defective lithium ion battery” and/or “Damaged/defective lithium metal battery” as appropriate. The marking required by this paragraph must be in characters at least 12 mm (0.47 inches) high.

Factual Allegations/Averments

1. On June 2, 2022, Investigator Ryan Rigdon, while conducting a compliance inspection at FAMCe in Fort Worth, TX, observed and photographed two composite IBCs with the inner tops removed, which were filled with damaged and defective lithium-ion batteries (See Exhibit 3 to Report No. 22239029). FAMCE provided Investigator Rigdon with the incoming bill of lading, dated May 19, 2022, that documented that Respondent offered for transportation in commerce UN 3480, Lithium-ion batteries, 9 without hazmat shipping papers (See Exhibit 2 to Report No. 22239029).
2. Investigator Rigdon noted that the bill of lading listed “40000” in the weight column with no unit of measure and “USED ELEC” under the “commodity description” column (See Exhibit 2 to Report No. 22239029). Investigator Rigdon further noted the packaging was not labeled, marked or packaged as required by the HMR. He provided these details in an e-mail to Investigator Alan Carson, dated July 28, 2022 (See Exhibit 4 to Report No. 22239029).
3. During the July 12, 2022 inspection of Respondent’s facility, PHMSA’s Investigator spoke to Respondent’s Shipping and Receiving Manager (Manager) at Respondent’s facility in Jacksonville, Texas. Investigator presented a copy of the bill of lading (See Exhibit 2 to Report No. 22239029) to Manager and asked him if he could identify the shipper signature on the bill of lading. Manager identified the signature as Mr. Cipriano Espinoza, the forklift driver for Respondent and the person who loaded the lithium-ion batteries onto the truck that transported the IBCs containing the damaged defective lithium-ion batteries to FAMCe in Fort Worth, TX (See Exhibit 5, oral interview, to Report No. 22239029).
4. During the inspection, Investigator observed and photographed a composite IBC with the inner top removed, where the IBC was being filled with lithium-ion batteries (See Exhibit

6 to Report No. 22239029). Investigator asked Manager where the lithium-ion batteries come from. Manager related that the lithium-ion batteries come from the Respondent's laptop facility located in Jacksonville, TX on a truck operated by Respondent. Manager related that the contacts for the lithium-ion batteries are taped, instead of being placed in an individual inner package, as required; Respondent does not separate damaged, defective lithium-ion batteries from lithium-ion batteries being transported for disposal or recycling (See Exhibit, 5 oral interview, to Report No. 22239029).

On or about May 19, 2022, Respondent offered for transportation in commerce a hazardous material, UN 3480, Lithium-ion batteries, 9, PGI (damaged, defective) without hazmat shipping papers, package labels, package markings and authorized packaging, thereby creating an undeclared shipment of hazardous materials, in violation of 49 CFR §§ 171.2(a), (b), (c) & (e); 172.200(a), 172.300(a), 172.400(a); and 173.185(f).

Probable Violation No. 2

Allowing an employee to perform functions subject to the requirements of the HMR, while failing to provide general awareness, function-specific, safety and security awareness training to hazmat employee, in violation 49 CFR §§ 171.2 (a), (e)&(f); 172.702(b); and 172.704(a)(1), (2), (3) & (4).

Regulatory Standard

1. 49 CFR 171.2(f) requires that no person transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of the HMR, or an exemption or special permit, approval, or registration issued under the HMR or subchapter A of this chapter. Each carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material or a prior carrier, unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror or prior carrier is incorrect.
2. Section 172.702(b) states that, except as provided in §172.704(c)(1), a hazmat employee who performs any function subject to the requirements of the HMR may not perform that function unless instructed in the requirements of the HMR that apply to that function. It is the duty of each hazmat employer to comply with the applicable requirements of the HMR and to thoroughly instruct each hazmat employee in relation thereto.
3. (a) Section 172.704(a) states that hazmat employee training must include the following:

- a. (1) Each hazmat employee shall be provided general awareness/familiarization training designed to provide familiarity with the requirements of the HMR, and to enable the employee to recognize and identify hazardous materials consistent with the hazard communication standards of the HMR.
- b. (2)
 - i. (i) Each hazmat employee must be provided function-specific training concerning requirements of this subchapter, or exemptions or special permits issued under subchapter A of this chapter, that are specifically applicable to the functions the employee performs.
 - ii. (ii) As an alternative to function-specific training on the requirements of this subchapter, training relating to the requirements of the ICAO Technical Instructions and the IMDG Code may be provided to the extent such training addresses functions authorized by subpart C of part 171 of this subchapter.
- c. (3) Each hazmat employee shall receive safety training concerning—
 - i. (i) Emergency response information required by subpart G of part 172;
 - ii. (ii) Measures to protect the employee from the hazards associated with hazardous materials to which they may be exposed in the work place, including specific measures the hazmat employer has implemented to protect employees from exposure; and
 - iii. (iii) Methods and procedures for avoiding accidents, such as the proper procedures for handling packages containing hazardous materials.
- 4. (4) Each hazmat employee must receive training that provides an awareness of security risks associated with hazardous materials transportation and methods designed to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats. New hazmat employees must receive the security awareness training required by this paragraph within 90 days after employment.

Factual Allegations/Averments

1. On June 2, 2022, Investigator Ryan Rigdon, while conducting a compliance inspection at FAMCe in Fort Worth, TX, observed and photographed two composite IBCs with the inner tops removed, which were filled with damaged and defective lithium-ion batteries (See Exhibit 3 to Report No. 22239029). FAMCe provided Investigator Rigdon with the incoming bill of lading, dated May 19, 2022, that documented that Respondent offered for transportation in commerce UN 3480, Lithium-ion batteries, 9, PG I (damaged, defective) without hazmat shipping papers (See Exhibit 2 to Report No. 22239029).

2. Investigator Rigdon noted that the bill of lading listed “40000” in the weight column with no unit of measure and “USED ELEC” under the “commodity description” column (See Exhibit 2 to Report No. 22239029). Investigator Rigdon further noted the packaging was not labeled, marked or packaged as required by the HMR. He provided these details in an e-mail to Investigator Alan Carson, dated July 28, 2022 (See Exhibit 4 to Report No. 22239029).
3. During the July 12, 2022 inspection of Respondent’s facility, PHMSA’s Investigator spoke to Respondent’s Shipping and Receiving Manager (Manager) at Respondent’s facility in Jacksonville, Texas. Investigator presented a copy of the bill of lading (See Exhibit 2 to Report No. 22239029) to Manager and asked him if he could identify the shipper signature on the bill of lading. Manager identified the signature as Mr. Cipriano Espinoza, the forklift driver for Respondent and the person who loaded the lithium-ion batteries onto the truck that transported the IBCs containing the damaged defective lithium-ion batteries to FAMCe in Fort Worth, TX (See Exhibit 5, oral interview, to Report No. 22239029).
4. Investigator asked Manager if any of Respondent’s employees had had the hazmat training required by the HMR, to which he responded “no.” (See Exhibit 5, oral interview, to Report No. 22239029).

On or about May 19, 2022, Respondent allowed an employee to perform functions subject to the requirements of the HMR, while failed to provide general awareness, function-specific, safety and security awareness training to hazmat employee, in violation 49 CFR §§ 171.2 (a), (e)&(f); 172.702(b); and 172.704(a)(1), (2), (3) & (4).

FACTS ALREADY CONSIDERED (UNDER 49 CFR § 107.331) IN SETTING PROPOSED PENALTIES

Prior Violations:

When setting a civil penalty, PHMSA will review the respondent's compliance history and determine if there are any finally-adjudicated violations of the HMR initiated within the previous six years. Only cases or tickets that have been finally-adjudicated will be considered (i.e., the ticket has been paid, a final order has been issued, or all appeal remedies have been exhausted or expired). PHMSA will include prior violations that were initiated within six years of the present case; a case or ticket will be considered to have been initiated on the date of the exit briefing for both the prior case and the present case. If multiple cases are combined into a single Notice of Probable Violation or ticket, the oldest exit briefing will be used to determine the six-year period. If a situation arises where no exit briefing is issued, the date of the Notice of Probable

Violation or Ticket will be used to determine the six-year period. PHMSA may consider prior violations of the Hazardous Materials Regulations from other DOT Operating Administrations.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows (49 CFR Part 107, Subpart D, Appendix A):

1. For each prior civil or criminal enforcement case—25 percent increase over the pre-mitigation recommended baseline penalty.
2. For each prior ticket—10 percent increase over the pre-mitigation recommended baseline penalty.
3. If a respondent is cited for operating under an expired special permit and previously operated under an expired special permit (as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the civil penalty 100 percent.
4. If a respondent is cited for the exact same violation that it has been previously cited for within the six-year period (in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the baseline for that violation by 100 percent. This increase will apply only when the present violation is identical to the previous violation and applies only to the specific violation that has recurred.
5. A baseline proposed penalty (both for each individual violation and the combined total) will not be increased more than 100 percent on the basis of prior violations.

PHMSA's records do not contain any prior violations by Respondent and PHMSA did not consider any prior violations in determining the proposed assessment for the violation in this Notice.

Penalty Increases for Multiple Counts:

PHMSA generally will treat multiple occurrences that violate a single regulatory provision as separate violations and assess the applicable baseline penalty for each distinct occurrence of the violation. PHMSA will generally consider multiple shipments or, in the case of package testers, multiple package designs, to be multiple occurrences; and each shipment or package design may constitute a separate violation.

PHMSA, however, will exercise its discretion in each case to determine the appropriateness of combining into a single violation what could otherwise be alleged as separate violations and applying a single penalty for multiple counts or days of a violation, increased by 25 percent for each additional instance, as directed by 49 U.S.C. 5123(c). For example, PHMSA may treat a single shipment containing three items or packages that violate the same regulatory provision as a single violation and apply a single baseline penalty with a 50 percent increase for the two

additional items or packages; and PHMSA may treat minor variations in a package design for a package tester as a single violation and apply a single baseline penalty with a 25 percent increase for each additional variation in design.

When aggravating circumstances exist for a particular violation, PHMSA may handle multiple instances of a single regulatory violation separately, each meriting a separate baseline or increase the civil penalty by 25 percent for each additional instance. Aggravating factors may include increased safety risks, continued violation after receiving notice, or separate and distinct acts. For example, if the multiple occurrences each require their own distinct action, then PHMSA may count each violation separately (e.g., failure to obtain approvals for separate fireworks devices) (49 CFR Part 107, Subpart D, Appendix A).

Corrective Action:

An important purpose of PHMSA's enforcement program is to bring the regulated community into compliance with the HMR, and to promote ongoing efforts by that community to maintain compliance. In determining the final penalty assessment, PHMSA considers documented evidence of actions taken by a Respondent to correct violations and ensure that they do not recur (49 CFR § 107.331(g)).

In its July 27, 2022 email, Respondent addressed the actions it has taken to correct the violations alleged in this Notice and to prevent future violations of the HMR. Respondent described and documented its corrective action as follows:

- Violation No.1:

Respondent provided an email stating that it has purchased the materials to properly ship the hazardous materials, but has not provided any documentation showing the purchase of those materials.

- Violation No.2:

Respondent stated that it has purchased training materials, but has not provided any documentation showing that the training was performed.

Based on this information and documentation, the proposed penalty has been reduced by 10% (as indicated below).

In order to justify further reduction of the proposed penalty, Respondent must submit additional information and documentation (such as documentation showing that both violations have been remedied).

Financial Status

Under 49 CFR §107.331 (e) and (f), the proposed penalty may be reduced if Respondent demonstrates that it is unable to pay that penalty, or if payment of the proposed penalty would affect Respondent's ability to continue in business. Respondent's poor financial condition may be a basis for reducing the proposed penalty; a healthy financial condition is *not* a basis for increasing the penalty.

PHMSA has no information that indicates that Respondent is unable to pay the proposed penalty or that payment of the proposed penalty will affect Respondent's ability to continue in business. If Respondent wishes its financial condition to be considered in assessing a penalty for the violation(s) alleged in this Notice, it must provide current financial information (i.e., copies of Respondent's three most current Federal tax returns, an income statement, and a current balance sheet, preferably certified).

TOTAL CIVIL PENALTY PROPOSED

Probable Violation	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	\$20,000	\$0	\$2,000 [10% reduction]	\$18,000
2	\$4,000	\$0	\$400 [10% reduction]	\$3,600
TOTAL	\$24,000	\$0	\$2,400	\$21,600

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY
ADMINISTRATION**

How do I respond to this Notice of Probable Violation (Notice)?

You may respond to this Notice in any of three ways:

- (1) Pay the proposed assessment (49 C.F.R. § 107.315);
- (2) Send an informal response, which can include a request for an informal conference (§ 107.317); or
- (3) Request a formal hearing (§ 107.319).

How do I pay the proposed assessment?

You pay the proposed assessment by:

- (1) Sending a wire transfer, through the Federal Reserve Communications System (Fedwire), to the U.S. Treasury account (49 C.F.R. § 89.21(b)(3)). Addendum C contains the instructions for sending wire transfers. Questions concerning wire transfers should be directed to:

DOT/PHMSA/MMAC, AMK-325/HQ-RM 181
6500 S MacArthur Blvd.
Oklahoma City, OK 73169
(Telephone No. (405) 954-9309)

Or

- (2) Sending a certified check or money order if the penalty amount is \$10,000 or less. The certified check or money order must be payable to the "U.S. Department of Transportation" and must be mailed to:

DOT/PHMSA/MMAC, AMK-325/HQ-RM 181
6500 S MacArthur Blvd.
Oklahoma City, OK 73169
(Telephone No. (405) 954-9309)

Or

- (3) Using a credit card via the Internet. To pay electronically with a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/public/form/start/1078346>

Where do I send my response?

You must address your informal response or formal hearing request to the attorney who issued the Notice at the following address:

Pipeline and Hazardous Materials Safety Administration
Office of the Chief Counsel (PHC-10)
Room E26-105
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, D.C. 20590

When is my response due? (§ 107.313)

You must respond to the Notice within thirty (30) days of the date you receive it. The attorney who issued the Notice may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period.

What happens if I do not respond? (§ 107.313)

If you fail to respond to the Notice within thirty (30) days of receiving it (or by the end of any extension), you will waive your right to contest the allegations made in Addendum A to the Notice. In addition, the Chief Counsel will issue a default Order finding the facts as alleged in the Notice and assessing the civil penalty as outlined within that notice.

May I propose a compromise offer? (§ 107.327)

Yes. At any time before an order is issued and referred to the Attorney General for collection, you may propose to compromise a civil penalty case by submitting a specific compromise offer amount to the attorney handling the case (§ 107.327). The Chief Counsel may also propose a compromise.

If a compromise is agreeable to all parties, the attorney handling the case will forward a compromise agreement to you for signature. This document will outline the terms of the joint agreement and you must return a signed original to the attorney handling the case within 30 days.

After this agreement has been returned it will be signed by the assigned attorney and presented to the Chief Counsel with a request that the Chief Counsel adopt the terms of that agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of the agreement constitute an offer of compromise until accepted by the Chief Counsel. When you agree to a compromise, you give up your right to appeal the order issued by the Chief Counsel

What should I include in my informal response? (§107.317)

Your informal response must contain written explanations, information or arguments that respond to the allegation(s), the amount of the proposed civil penalty, or the terms of a proposed compliance order. Provide complete documentation of your explanations and arguments. No specific format is required for an informal response.

May I request an informal conference? (§ 107.317)

Yes. You may request an informal conference as part of your informal response. Please describe the issues you want to discuss during the conference. After receiving your request, the attorney handling the case will contact you to arrange the conference. Normally the conference will be held by telephone, and the attorney handling the case and the inspector who conducted the compliance inspection will participate in the conference.

What happens after I submit an informal response to the Notice?

We will hold an informal conference if you have asked for one. Based on the Notice, the evidence supporting the Notice, any written explanations, information and documentation that you provide, and matters presented at a conference, the Chief Counsel decides the case. The Chief Counsel may issue an order finding all or some of the violation(s) alleged in the Notice or may withdraw all or some of the alleged violation(s). If the Chief Counsel finds violation(s), the order will assess a civil penalty.

How do I appeal an order? (§ 107.325)

You may appeal an order to PHMSA's Administrator.

How do I request a formal hearing? (§ 107.319)

You must request a formal hearing within 30 days of the date that you receive the Notice. If you are granted an extension of time to respond to the Notice, you must submit a formal hearing request by the end of the extended time period. If you do not request a formal hearing within the specified time, you will waive your right to a formal hearing.

Your request for a formal administrative hearing must include the following:

- (1) The name and address of the respondent and any other persons submitting the request;
- (2) A statement of which allegations of violations are not in dispute; and
- (3) A description of the issues that you will raise at the hearing. (The Administrative Law Judge will decide whether issues not raised in the request may be raised at the hearing.)

After receiving a request for a hearing that complies with these requirements, the Chief Counsel will request an Administrative Law Judge from the DOT Office of Hearings to preside over the hearing. Once an Administrative Law Judge is assigned, all further matters in the proceeding will be conducted by the Administrative Law Judge. Either you or PHMSA may appeal the decision of the Administrative Law Judge to PHMSA's Administrator.

How does PHMSA determine if I have committed a violation?

This is a civil penalty case and PHMSA uses the "knowingly" standard, which is defined in the Federal hazardous materials transportation law (See 49 U.S.C. 5123(a)(1)), in all civil penalty cases. The standard for a violation is similar to "negligence". After considering all the available information (including the additional information you provide in your response to the Notice), PHMSA must find either that (1) you had actual knowledge of the facts giving rise to the violation, or (2) you had imputed knowledge, of the facts giving rise to the violation, in that a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. PHMSA does not need to find that you actually knew about, or intended to violate, requirements in the Federal hazardous material transportation law or the HMR.

What factors does PHMSA consider when proposing and assessing a civil penalty? (§ 107.331)

PHMSA considers the following factors when proposing and assessing a civil penalty for a violation of the regulations:

- (1) The nature and circumstances of the violation(s);
- (2) The extent and gravity of the violation(s);
- (3) The degree of your culpability;
- (4) Your history, if any, of prior offenses;
- (5) Your ability to pay the penalty;

- (6) The effect of the penalty on your ability to continue in business;
- (7) The size of your business, and
- (8) Other matters as justice may require.

The nature and the timeliness of any corrective action you take to prevent future violations of a similar nature will be considered under item No. 8. However, you must submit documented evidence of that corrective action to the PHMSA attorney. If you have submitted documented evidence regarding any of these factors during PHMSA's investigation of the alleged violation(s), and that documentation is referenced in the Notice or accompanying Inspection/Investigation Report, you do not need to resubmit it.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), PHMSA must consider the rights of small entities in enforcement actions. PHMSA's hazardous materials enforcement program has been designed to consider small businesses and the penalties that PHMSA proposes and assesses are generally considered appropriate for small businesses. PHMSA takes into consideration the size of the company when proposing and assessing a civil penalty.

However, special consideration may not be given to a small business if:

- (1) The small business has not corrected its violation(s) within a reasonable time;
- (2) The small business has committed one or more prior violations of the HMR;
- (3) The violations involve willful conduct;
- (4) The violations pose serious threats to health, safety or the environment; or
- (5) The small business has not made a good faith effort to comply with the law.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. Our objective is to ensure a fair regulatory enforcement environment.

You have a right to contact the Small Business Administration's national Ombudsman at 1-888- REG-FAIR (1-888-734-3247) or <https://www.sba.gov/ombudsman> regarding the fairness of the compliance and enforcement activities by this agency.

The Pipeline and Hazardous Materials Safety Administration strictly forbids retaliatory acts by

its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

Where can I find more information on how PHMSA handles hazardous materials enforcement cases?

A more detailed discussion of these procedures is in 49 C.F.R. §§ 107.301 through 107.333. These procedures are also on the Office of the Chief Counsel's home page at <http://www.phmsa.dot.gov/org/office-of-chief-counsel>.

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ARB NO.</u> (provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or sending bank)
9. <u>BENEFICIAL (BNF)- AGENCY LOCATION CODE</u> BNF=/AC-69140001	10. <u>REASONS FOR PAYMENT</u> <i>Example: PHMSA Payment for Case #/Ticket</i>

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, which must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69140001" Ensure the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #10 - REASON FOR PAYMENT – "AC-Payment for PHMSA Case#" To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer, the General Accounting Division at (405) 954-9309.