



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

Office of  
Chief Counsel

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***Hazardous Materials Safety Law  
Division***

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**NOTICE OF PROBABLE VIOLATION**

Date Issued: November 26, 2024

PHMSA Case No.: 24-0148-SH-SW

Respondent: Lufkin Don-Nan Pump and Supply Co., Inc.  
3427 E. State Highway 158  
Midland, TX 79706  
ATTN: Saeid Rahimian, President

No. of Alleged Violations: 2

Total Proposed Assessment: \$5,775 (includes a \$1,925 reduction for corrective action)

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 \$99,756 (or \$232,762 if the violation results in death, serious illness or severe injury, or substantial destruction of property), and a minimum civil penalty of \$601 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.**

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.

**SAMANTHA**  
**ANN VRSCAK**

Digitally signed by  
SAMANTHA ANN VRSCAK  
Date: 2024.11.26 15:09:35  
-05'00'

Samantha Vrscak, Attorney

Enclosures: Addendum A  
Addendum B  
Addendum C

cc: Ana Velasco, HSE Manager (ana.velasco@lufkin.com)

SERVICE BY ELECTRONIC MAIL

# **ADDENDUM A**

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## **GENERAL ALLEGATIONS**

### General Factual Allegations/Averments

1. On June 24, 2024, PHMSA's Investigator conducted an inspection at Respondent's facility in Midland, Texas
2. Ana Velasco, HSE Manager, and William Rothlisberger, Distribution Center Manager, represented the company and provided necessary information and documentation.
3. Respondent is a manufacturer and distributor of barrel pipe and plunders used in the oil and gas industry. Respondent also ships lead-based lubricants, a Class 9 hazardous material, in 5-gallon UN standard pails using company trucks.
4. Respondent has fewer than ten hazardous materials employees.
5. As an offeror and transporter 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 and transporting in commerce, RQ, UN3077, Environmentally hazardous substance, solid, n.o.s. (Lead), a Class 9, Packing Group III hazardous material, without shipping papers that complied with the requirements of the HMR, in violation of 49 CFR §§ 171.2(a), (b), and (e); 172.200(a); 172.201(d); 172.202(a) and (b); and 172.203(c).

### Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by the HMR must perform that function in accordance with the HMR.
2. Pursuant to 49 CFR § 171.2(b), each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of the HMR.
3. Pursuant to 49 CFR § 171.2(e), no person may 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.

4. Pursuant to 49 CFR § 172.200(a), 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 of the HMR.
5. Pursuant to 49 CFR § 172.201(d), except as otherwise provided in § 172.604(d), a shipping paper must contain an emergency response telephone number and, if utilizing an emergency response information telephone number service provider, identify the person (by name or contract number) who has a contractual agreement with the service provider.
6. Pursuant to 49 CFR § 172.202(a), the shipping description of a hazardous material on the shipping paper must include:
  - (1) The identification number prescribed for the material as shown in Column (4) of the Hazardous Materials Table (HMT), found at § 172.101;
  - (2) The proper shipping name prescribed for the material in Column (2) of the HMT;
  - (3) The hazard class or division number prescribed for the material, as shown in Column (3) of the HMT. Except for combustible liquids, the subsidiary hazard class(es) or subsidiary division number(s) must be entered in parentheses immediately following the primary hazard class or division number;
  - (4) The packing group in Roman numerals, as designated for the hazardous material in Column (5) of the HMT, if applicable;
  - (5) Except for transportation by aircraft, the total quantity of hazardous materials covered by the description must be indicated (by mass or volume, or by activity for Class 7 materials) and must include an indication of the applicable unit of measurement. Exceptions from this requirement are 1) bulk packages, provided some indication of the total quantity is shown, for example, “1 cargo tank” or “2 IBCs;” cylinders, provided some indication of the total quantity is shown; and packages containing only residue; and
  - (6) The number and type of packages must be indicated. The type of packages must be indicated by description of the package (for example, “12 drums”). Indication of the packaging specification number (“1H1”) may be included in the description of the package (for example, “12 1H1 drums” or “12 drums (UN 1A1)”). Abbreviations may be used for indicating packaging types (for example, “cyl.” for “cylinder”) provided the abbreviations are commonly accepted and recognizable.
7. Pursuant to 49 CFR § 172.202(b), except as provided in this subpart, the basic description specified in paragraphs (a)(1), (2), (3), and (4) of this section must be shown in sequence with no additional information interspersed. For example, “UN2744, Cyclobutyl chloroformate, 6.1, (8, 3), PG II.”
8. Pursuant to 49 CFR § 172.203(c), for hazardous substances, except for Class 7 (radioactive) materials, if the proper shipping name for a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance must be entered in parentheses in association with the basic description. The

letters “RQ” must be entered on the shipping paper either before or after the basic description required by § 172.202 for each hazardous substance (see definition in § 171.8 of this subchapter). For example: “RQ, UN 1098, Allyl alcohol, 6.1, I, Toxic-inhalation hazard, Zone B”; or “UN 3077, Environmentally hazardous substances, solid, n.o.s., 9, III, RQ (Adipic acid).”

#### Factual Allegations/Averments

1. On April 11, 2024, a truck belonging to Respondent was inspected by PHMSA’s Investigators near Hobbs, New Mexico, as part of a Multi-Agency Strike Force Operation. Inside the truck was one 5-gallon pail marked as containing RQ, UN3077, Environmentally hazardous substance, solid, n.o.s. (lead), or “API Modified,” and labeled with a Class 9 hazardous materials label. The driver did not have a shipping paper for the material. (See Report No. 24320007, page 2; Exhibits 2-3).
2. During the follow-up inspection on June 24, 2024, at Respondent’s facility, PHMSA’s Investigator asked Respondent’s representative if Respondent had created a shipping paper for the previous shipment of “API Modified.” In an oral interview, Respondent’s representative stated that no shipping papers had been created for “API Modified.” (See Report No. 24320007, pages 2-3, Exhibit 2).
3. Respondent provided the safety data sheet (SDS) for “API Modified,” confirming the material was hazardous and regulated as UN3077, Environmentally hazardous substance, solid, n.o.s. (Lead, Copper metal powder), Class 9, Packing Group III. Additionally, the lead, a hazardous substance listed in Table 1, Appendix A of § 172.101, which was contained in the material had a reportable quantity (RQ) of 10 pounds (4.54 kg). The calculated product RQ was 32 lbs. of “API Modified.” (See Report No. 24320007, page 2; Exhibit 3).
4. In an oral interview, Respondent’s representative explained that each 5-gallon pail of “API Modified” weighed approximately 50 lbs. (See Report No. 24320007, page 2; Exhibit 2).
5. Accordingly, because “API Modified” was a hazardous material that also contained a hazardous substance in a reportable quantity, Respondent was required to have a shipping paper that complied with the requirements of the HMR when it offered and transported it in commerce. *See* 49 CFR §§ 172.200(a); 172.203(c). (See Exhibit 3 of Report No. 24320007).
6. Respondent also provided invoices showing the shipment of 50-lb. pails of “API Modified” to Hobbs NM Warehouse DHP in Hobbs, NM, on February 13, March 5, and March 26, 2024. Respondent’s representative confirmed hazardous materials shipping papers were not created for these shipments. (See Exhibits 2, 4 of Report No. 24320007).
7. On or about February 13, March 5 and 26, and April 11, 2024, Respondent offered and/or transported in commerce, RQ, UN3077, Environmentally hazardous substance, solid,

n.o.s. (Lead), a Class 9, Packing Group III hazardous material, without shipping papers that complied with the requirements of the HMR, in violation of 49 CFR §§ 171.2(a), (b), and (e); 172.200(a); 172.201(d); 172.202(a) and (b); and 172.203(c).

- Please see Inspection/Investigation Report Number 24320007 at pages 2-3, and the exhibits that accompany this report, which are incorporated herein.

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#### Probable Violation No. 2

Allowing employees to perform functions subject to the requirements of the HMR, when those employees had not received initial general awareness, function-specific, safety, and security awareness training, in violation of 49 CFR §§ 171.2(a) and (b); 172.702(a) and (b); and 172.704(a) and (c)(1).

#### Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by the HMR must perform that function in accordance with the HMR.
2. Pursuant to 49 CFR § 171.2(b), each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of the HMR.
3. Pursuant to 49 CFR § 172.702(a), a hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements prescribed in the HMR.
4. Pursuant to 49 CFR § 172.702(b), 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.
5. Pursuant to 49 CFR § 172.704(a)(1)-(4), each employee who handles hazardous materials must receive training that includes general awareness/familiarization training, function-specific training, safety training, and security awareness training.
6. Pursuant 49 CFR § 172.704(c)(1), a new hazmat employee, or a hazmat employee who changes job functions may perform those functions prior to completion of training only if (i) the employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and (ii) the training is completed within 90 days after employment of change in job function.



Factual Allegations/Averments

1. During the inspection, PHMSA's Investigator asked Respondent's representative how many hazardous materials employees Respondent employed. In an oral interview, Respondent's representative stated there were three hazmat employees. (See Report No. 24320007, page 4; Exhibit 2).
2. PHMSA's Investigator requested training records for Respondent's hazardous materials employees. Respondent's representative confirmed no hazmat training had been provided to Respondent's hazardous materials employees. (See Report No. 24320007, page 4; Exhibit 2).
3. Respondent provided PHMSA's Investigator with invoices showing it had offered for transportation in commerce 50-lb. pails of "API Modified," to Hobbs NM Warehouse DHP in Hobbs, NM, on February 13, March 5, and March 26, 2024. (See Report No. 24320007, page 4; Exhibits 2, 4).
4. Respondent also provided a safety data sheet for "API Modified," confirming the material was hazardous and regulated as UN3077, Environmentally hazardous substance, solid, n.o.s. (Lead, Copper metal powder), 9, PGIII. Additionally, the lead, a hazardous substance listed in Table 1, Appendix A of § 172.101, which was contained in the material had a reportable quantity (RQ) of 10 pounds (4.54 kg). The calculated product RQ was 32 lbs. of "API Modified." (See Report No. 24320007, page 4; Exhibit 3).
5. Respondent has employees who handle hazardous materials and perform functions subject to the HMR, and failed to provide initial general awareness, function-specific, safety, and security awareness training, in violation of the HMR.
6. On or about February 13, March 5, and March 26, 2024, Respondent allowed employees to perform functions subject to the requirements of the HMR, when that employee had not received initial general awareness, function-specific, safety, and security awareness training, in violation of 49 CFR §§ 171.2(a) and (b); 172.702(a) and (b); and 172.704(a) and (c)(1).

- Please see Inspection/Investigation Report Number 24320007 at pages 4-5, and the exhibits that accompany this report, which are incorporated herein.

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**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 email correspondence on July 26 and 29, 2024, 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 explained it had quarantined the hazardous material at its warehouse and was no longer shipping the material. All shipments of "API Modified" were now being shipped directly from Respondent's vendors. Once a decision was made on how to proceed with the remaining material at the warehouse, Respondent would use a bill of lading to offer the material for shipment.
- Violation No.2: Respondent provided training records, showing its three hazmat employees had been trained and tested the areas of general awareness, function-specific, safety, and security awareness on July 26, 2024.

Based on this information and documentation, the proposed penalty has been reduced by 25% (as indicated below).

#### 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]).

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**TOTAL CIVIL PENALTY PROPOSED**

Probable Violation	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	\$3,700	\$0	-\$925	\$2,775
2	\$4,000	\$0	-\$1,000	\$3,000
TOTAL	\$7,700	\$0	-\$1,925	\$5,775

# **ADDENDUM B**

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**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 person 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>.

# **ADDENDUM C**

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**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:</i> PHMSA Payment for Case #/Ticket

**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.