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: 4/7/25

PHMSA Case No.: 24-0215-SH-CE

Respondent: Evolution Completions, Inc.
4904 2nd Ave W
Williston, ND, 58801
ATTN: Alan Roness, President

No. of Alleged Violations: 6

Total Proposed Assessment: $23,625

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 $96,624 (or $225,455 if the violation results in death, serious illness or severe injury, or substantial destruction of property), and a minimum civil penalty of $582 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.

LAURA ELIZABETH ULMER
Digitally signed by LAURA ELIZABETH ULMER
Date: 2025.04.07 10:04:09 -04'00'

Laura Ulmer, Attorney

Enclosures: Addendum A
Addendum B
Addendum C

cc: Jake Lee, Vice-President

SERVICE BY ELECTRONIC MAIL

ADDENDUM A

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GENERAL ALLEGATIONS

General Factual Allegations/Averments

1. On June 12 and 13, 2024, PHMSA's Investigator conducted an inspection at Respondent's facility in Williston, North Dakota.
2. Kate Bloem, HSE Manager, and Jake Lee, Vice President, represented the company and provided necessary information and documentation.
3. Respondent is an offeror and transporter of Division 1.3, 1.4, 4.1, and 5.1 hazardous materials in UN-specification boxes and non-specification cylinders.
4. As an offeror/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).
5. During an inspection at Respondent's facility on June 12 and 13, 2024, PHMSA's Investigator observed packages in which shipments of Division 1.3, 1.4, 4.1, and 5.1 materials were made and vehicles on which the shipments were made, and reviewed records of shipments, hazmat employee training and special permits.
6. Respondent provided the PHMSA Investigator the following documents: shipping papers, Safety Data Sheets (SDSs), and SP14796
7. During the course of the investigation, the PHMSA Investigator obtained the following documents: shipping papers, SDSs, SP14796, and a statement from Jake Lee.

SPECIFIC ALLEGATIONS

Probable Violation No. 1

Offering for transportation and transporting in commerce UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I while failing to follow the requirements of a Special Permit, in violation of 49 CFR §§ 171.2(a), (b), and (f); 173.22(a)(2)(v); 177.801; and DOT-SP 14796.

Regulatory Standard

1. 49 CFR § 171.2(a) states that each person who performs a function covered by this subchapter 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 this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter 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 this subchapter, 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(f) states that no person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter 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.
4. Section 173.22(a)(2)(v) requires that, except as otherwise provided in this part, a person may offer a hazardous material for transportation in a packaging or container required by this part only in accordance with the following: An exemption or special permit issued under subchapter A of the HMR.
5. Section 177.801 states that no person may accept for transportation or transport by motor vehicle a forbidden material or hazardous material that is not prepared in accordance with the requirements of the HMR.

6. Section 7(c)(2) of DOT-SP 14796 requires that cylinders be overpacked in a strong wooden crate with a maximum capacity of six cylinders per box.

Factual Allegations/Averments

1. During the inspection on June 12 and 13, 2024, Investigator observed and photographed "UN1746, Bromine Trifluoride, 5.1 (6.1, 8), PGI, Poison Inhalation Hazard, Zone B" in non-DOT specification cylinder on a metal rack in Respondent's warehouse (See Exhibit 2, Pages 1-3, to Report No. 24548022. In speaking with one of Respondent's hazmat employees, Jordan Thormahlen, Investigator learned that Mr. Thormahlen transports these non-specification cylinders to customer's job sites. Investigator asked him to explain how he prepares the cylinders for shipment. He stated that cylinders are obtained from the holding rack, where labels and markings are replaced if damaged, and the cylinders are them placed in the back seat of his company pickup truck to be transported to job sites (See Exhibit 2 to Report No. 24548022).
2. Investigator asked Mr. Thormahlen if he was familiar with DOT-SP 14796 and its requirement that Bromine Trifluoride cylinders be overpacked in a strong wooden crate with a maximum capacity of six cylinders per crate. He indicated that he was not familiar with the SP or its requirements.
3. Investigator asked Respondent's representative if Respondent had a copy of the SP. He indicated that it did and provided a copy to Investigator (See Exhibit 3 (mistakenly labeled as Exhibit 5) to Report No. 24548022)
4. Investigator obtained shipping papers used by Respondent to offer and transport non-DOT specification cylinders containing UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, indicating that this substance was transported in accordance with DOT-SP 14796.
    a. A shipping paper dated May 29, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).
    b. A shipping paper dated June 9, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, being transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).
    c. A shipping paper dated June 11, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, being transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).
5. Investigator obtained a copy of the SDS for UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, confirming it as a hazardous material (See Exhibit 5 to Report No. 24548022).

6. Investigator obtained a signed statement from Respondent's representative acknowledging that Respondent had transported UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, without using the strong wood crate overpack as required (See Exhibit 6 to Report No. 24548022).
7. On or about May 29, June 9 and June 11, 2024, Respondent offered for transportation and transported in commerce UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I while failing to follow the requirements of a Special Permit, in violation of 49 CFR §§ 171.2(a), (b), and (f); 173.22(a)(2)(v); 177.801; and DOT-SP 14796.

- Please see Inspection/Investigation Report Number 24548022 at pages 3-5, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 2

Offering for transportation and transporting in commerce Division 1.4B and 1.4S explosives in the same outer packaging, despite them being incompatible explosives, in violation of 49 CFR §§171.2(a), (b), (e), (f); 173.22(a)(2), and 173.61(c).

Regulatory Standard

1. Section 171.2(e) states that 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 this subchapter or an exemption or special permit, approval, or registration issued under the HMR or subchapter A of this chapter.
2. Section 173.22(a)(2) states that, except as otherwise provided in this part, a person may offer a hazardous material for transportation in a packaging or container required by this part only in accordance with the following:
3. Section 173.61(c) specifies that the following explosives may not be packed together with other Class 1 explosives: UN 0029, UN 0030, UN 0073, UN 0106, UN 0107, UN 0255, UN 0257, UN 0267, UN 0350, UN 0360, UN 0361, UN 0364, UN 0365, UN 0366, UN 0367, UN 0408, UN 0409, UN 0410, UN 0455, UN 0456, and UN 0500. These explosives may be mix-packed with each other in accordance with the compatibility requirements prescribed in paragraph (e) of this section.

Factual Allegations/Averments

1. During the inspection on June 12 and 13, 2024, Investigator observed and photographed a UN-standard fiberboard box sitting on the back seat of one of Respondent's pick-up trucks (See Exhibit 7 to Report No. 24548022). The box was marked and labelled as

"UN0323, Cartridges, Power Device, 1.4S," displaying EX2015030653 (See Exhibit 7 to Report No. 24548022). Investigator learned that the truck had returned that morning from a job site.

2. Investigator obtained the shipping paper for the previously photographed box (See Exhibit 8 to Report No. 24548022). It was dated June 12, 2024, and specified one box containing three UN0255, Detonators, electric, for blasting, 1.4B; four UN0481, Substances, explosive, n.o.s. (contains boron, potassium nitrate pellets), 1.4S; and five each of UN0323, Cartridges, power device, 1.4S and UN0454, Igniters, 1.4S; transported by Respondent's employee, Matt Sherman, from a customer's facility to Respondent's facility.

3. Mr. Sherman confirmed to the Investigator that he had transported the previously photographed box. At Investigator's request, Mr. Sherman opened the box and Investigator was able to verify and photograph four different types of explosive devices (See Exhibit 7 to Report No. 24548022). Using each device's manufacturer name, product name, and/or product number, Investigator used PHMSA's explosives approval's database to obtain each explosive's EX number.

    a. EX2005020018- Austin Powder A-140S Detonators," classified as UN0255, Detonators, electric, for blasting, 1.4B;

    b. EX2015030650- Baker Hughes Secondary Power Igniters, classified as UN0481, Substances, explosive, n.o.s. (contains boron, potassium nitrate pellets), 1.4S;

    c. EX2015030653- Baker Hughes Slow Set Power Charges, classified as UN0323, Cartridges, power device, 1.4S; and

    d. EX2019084001- Baker Hughes Primary Igniters, classifieds as UN0454, Igniters, 1.4S.

4. Investigator noted that these explosive devices were not compatible to be transported together under the regulations. Investigator obtained SDSs for each device and confirmed all to be hazardous materials (See Exhibits 9-12 to Report No. 24548022). Investigator obtained a signed statement from Respondent confirming that Respondent had transported non-compatible explosives in the same outer packaging (See Exhibit 6 to Report No. 24548022).

5. On or about June 13, 2024, Respondent offered for transportation and transported in commerce Division 1.4B and 1.4S explosives in the same outer packaging, despite them being incompatible explosives, in violation of 49 CFR §§171.2(a), (b), (e), (f); 173.22(a)(2), and 173.61(c).

- Please see Inspection/Investigation Report Number 24548022 at pages 7-9, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 3

Offering for transportation and transporting in commerce a quantity of hazardous materials requiring placarding while failing to develop a security plan, in violation of 49 CFR §§ 171.2(a), (b), and (c); 172.800(b)(5).

Regulatory Standard

1. 49 CFR § 171.2(c) requires 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.
2. Section 172.800(b)(5) states that each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a transportation security plan for hazardous materials that conforms to the requirements of this subpart, including
    a. (5) any quantity of a material poisonous by inhalation, as defined in § 171.8 of the HMR.

Factual Allegations/Averments

1. During the inspection on Jun 13, 2024, Investigator photographed cylinders containing UN1746, Bromine trifluoride, 5.1 (6.1, 8), I in non-DOT specification cylinders on a rack in the company's warehouse (See Exhibit 2 to Report No. 24548022). Investigator learned in the course of the inspection that Respondent's hazmat employee, Jordan Thormahlen, transports bromine trifluoride to customer jobsites.
2. Investigator asked to review Respondent's security plan. Respondent's representative could not provide one and indicated that he was unaware Respondent was supposed to have one. Investigator advised Respondent's representative that because bromine trifluouride is a Poison Inhalation Hazard Zone B substance, the company must create and maintain a security plan. Investigator then completed a Security Plan Evaluation form (See Exhibit 13 to Report No. 24548022)
3. Investigator obtained shipping papers used by Respondent to offer and transport non-DOT specification cylinders containing UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, indicating that this substance was transported in accordance with DOT-SP 14796.
    a. A shipping paper dated May 29, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).

b. A shipping paper dated June 9, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, being transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).

c. A shipping paper dated June 11, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, being transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).

4. Investigator obtained a copy of the SDS for UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, confirming it as a poisonous by inhalation hazardous material (See Exhibit 5 to Report No. 24548022).
5. On or about May 29, June 9, and June 11, 2024, Respondent offered for transportation and transported in commerce a quantity of hazardous materials requiring placarding while failing to develop a security plan, in violation of 49 CFR §§ 171.2(a), (b), and (c); 172.800(b)(5).

- Please see Inspection/Investigation Report Number 24548022 at pages 10-11, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 4

Allowing employees to perform a function subject to the requirements of the hazardous materials regulations when the hazmat employee had not received hazmat training to include general awareness, function specific, safety, security awareness, and in-depth security training, in violation of 49 CFR §§ 171.2(a), (b), and (e); 172.702(a) and (b); 172.704(a)(1), (2), (3), (4), (5), (c)(1), (4); and (d).

Regulatory Standard

1. 49 CFR 172.702(a) requires that a hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements prescribed in this subpart.
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 this subchapter that apply to that function. It is the duty of each hazmat employer to comply with the applicable requirements of this subchapter and to thoroughly instruct each hazmat employee in relation thereto.
3. Section 172.704(a)(1)- (5) state that hazmat employee training must include the following:

   a. (1) General awareness/familiarization training. Each hazmat employee shall be provided general awareness/familiarization training designed to provide familiarity with the requirements of this subchapter, and to enable the employee to recognize and identify hazardous materials consistent with the hazard communication standards of the HMR.
   b. (2) Function-specific training.
      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) Safety training. 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.
   d. (4) Security awareness training. 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.
   e. (5) In-depth security training. Each hazmat employee of a person required to have a security plan in accordance with subpart I of this part who handles hazardous materials covered by the plan, performs a regulated function related to the hazardous materials covered by the plan, or is responsible for implementing the plan must be trained concerning the security plan and its implementation. Security training must include company security objectives, organizational security structure, specific security procedures, specific security duties and responsibilities for each employee, and specific actions to be taken by each employee in the event of a security breach.

4. Section 172.704(c)(1) states that a new hazmat employee, or a hazmat employee who changes job functions may perform those functions prior to the completion of training provided—
   a. (i) The employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and

   b. (ii) The training is completed within 90 days after employment or a change in job function.
5. Section 172.704(c)(4) states that each hazmat employer is responsible for compliance with the requirements of the HMR regardless of whether the training required by this subpart has been completed.
6. Section 172.704(d) states that each hazmat employer must create and retain a record of current training of each hazmat employee, inclusive of the preceding three years, in accordance with this section for as long as that employee is employed by that employer as a hazmat employee and for 90 days thereafter. A hazmat employer must make a hazmat employee's record of current training available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation or of an entity explicitly granted authority to enforce the HMR. The record must include:
   a. (1) The hazmat employee's name;
   b. (2) The most recent training completion date of the hazmat employee's training;
   c. (3) A description, copy, or the location of the training materials used to meet the requirements in paragraph (a) of this section;
   d. (4) The name and address of the person providing the training; and
   e. (5) Certification that the hazmat employee has been trained and tested, as required by this subpart.

<u>Factual Allegations/Averments</u>

1. During the inspection, Investigator requested hazardous materials training documents and records for those employees involved in the shipping of hazardous materials, to include preparing and transporting explosive materials. Investigator requested training documents for Jordan Thormahlen. Respondent’s representative was unable to provide any hazmat training records for the requested employees. He indicated that they had not received hazmat training in the areas of general awareness, function specific, safety, security awareness, and in-depth security.
2. Investigator obtained shipping papers used by Respondent to offer and transport non-DOT specification cylinders containing UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, indicating that this substance was transported in accordance with DOT-SP 14796.

   a. A shipping paper dated May 29, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, transported by Mr. Thormahlen from Respondent’s facility to a customer’s facility (See Exhibit 4 to Report No. 24548022).

   b. A shipping paper dated June 9, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, being transported by Mr. Thormahlen from Respondent’s facility to a customer’s facility (See Exhibit 4 to Report No. 24548022).

   c. A shipping paper dated June 11, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, being transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).

3. Investigator obtained a copy of the SDS for UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, confirming it as a hazardous material (See Exhibit 5 to Report No. 24548022).
4. Investigator obtained a statement from Respondent's representative acknowledging that Respondent had failed to provide hazardous materials training to its employees (See Exhibit 6 to Report No. 24548022).
5. On or about May 29, June 9, and June 11, 2024, Respondent allowed employees to perform a function subject to the requirements of the hazardous materials regulations when the hazmat employee had not received hazmat training to include general awareness, function specific, safety, security awareness, and in-depth security training, in violation of 49 CFR §§ 171.2(a), (b), and (e); 172.702(a) and (b); 172.704(a)(1), (2), (3), (4), (5), (c)(1), (4), and (d).

- Please see Inspection/Investigation Report Number 24548022 at pages 12-15, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 5

Offering for transportation in commerce a hazardous material, UN1746, Bromine trifluoride, 5.1 (6.1, 8), I, Poison Inhalation Hazard, Zone B, in a quantity requiring placarding, while failing to register as a shipper of hazardous materials, in violation of 49 CFR §§ 171.2(a), (b), and (d); 107.601(a)(6); 107.608(a) and (b); 107.612; and 172.504(e).

Regulatory Standard

1. 49 CFR §171.2(d) states that no person may offer or accept a hazardous material for transportation in commerce or transport a hazardous material in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable.
2. Section 107.601(a)(6) states that the registration and fee requirements of this subpart apply to any person who offers for transportation, or transports, in foreign, interstate or intrastate commerce—
   a. (6) Except as provided in paragraph (b) of this section, a quantity of hazardous material that requires placarding, under provisions of subpart F of part 172 of this chapter.
3. Section 107.608(a) states that each person subject to this subpart must submit a complete and accurate registration statement on DOT Form F 5800.2 not later than June 30 for

each registration year, or in time to comply with paragraph (b) of this section, whichever is later. Each registration year begins on July 1 and ends on June 30 of the following year.

4. Section 107.608(b) states that no person required to file a registration statement may transport a hazardous material or cause a hazardous material to be transported or shipped, unless such person has on file, in accordance with § 107.620, a current Certificate of Registration in accordance with the requirements of this subpart.
5. Section 172.504(e) requires that transporting any amount of a Division 6.1 poison by inhalation substance requires placarding.

Factual Allegations/Averments

1. During the inspection of Respondent's facility, Investigator asked Respondent's representative for a copy of Respondent's Certificate of Registration. This is required as Respondent transported a hazardous material with a poison inhalation hazard, which required placarding in accordance with 49 CFR 107.601(a)(6) and 107.608(a) and (b). Respondent's representative indicated that Respondent was not registered with PHMSA.

2. Using the PHMSA Portal database, Investigator located a PHMSA registration for Respondent that had expired on June 30, 2020 (See Exhibit 14 to Report No. 24548022).

3. Investigator obtained shipping papers used by Respondent to offer and transport non-DOT specification cylinders containing UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, indicating that this substance was transported in accordance with DOT-SP 14796.

   a. A shipping paper dated May 29, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).

   b. A shipping paper dated June 9, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, being transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).

   c. A shipping paper dated June 11, 2024, denoted two cylinders of UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, being transported by Mr. Thormahlen from Respondent's facility to a customer's facility (See Exhibit 4 to Report No. 24548022).

4. Investigator obtained a copy of the SDS for UN1746, Bromine Trifluoride, 5.1 (6.1, 8), I, confirming it as a hazardous material (See Exhibit 5 to Report No. 24548022).

5. On or about May 29, June 9, and June 11, 2024, Respondent Offering for transportation in commerce a hazardous material, UN1746, Bromine trifluoride, 5.1 (6.1, 8), I, Poison Inhalation Hazard, Zone B, in a quantity requiring placarding, while failing to

register as a shipper of hazardous materials, in violation of 49 CFR §§ 171.2(a), (b), and (d); 107.601(a)(6); 107.608(a) and (b); 107.612; and 172.504(e).

- Please see Inspection/Investigation Report Number 24548022 at pages 16-18, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 6

Offering for transportation and transporting in commerce an explosive hazardous material, UN0323, Cartridges, power device, 1.4S, while failing to mark the UN identification number, proper shipping name, and EX number on a package, in violation of 49 CFR §§ 171.2(a), (b), (e), and (f); 172.300(a)(1); and 172.320.

Regulatory Standard

1. 49 CFR §172.300(a)(1) 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.
2. Section 172.320 specifies the marking requirements for explosive hazardous materials.

Factual Allegations/Averments

1. During the inspection, Investigator observed and photographed a UN-specification fiberboard box sitting on the back seat of one of Respondent's marked pickup trucks (See Exhibit 7 to Report No. 24548022). The box was marked and labelled as "UN0323, Cartridges, power device, 1.4S," and displayed EX number EX2015030653 (See Exhibit 7 to Report No. 24548022). Investigator learned that this truck had just returned from a job site.
6. Investigator obtained the shipping paper for this box (See Exhibit 8 to Report No. 24548022). It was dated June 12, 2024, and specified one box containing three UN0255, Detonators, electric, for blasting, 1.4B; four UN0481, Substances, explosive, n.o.s. (contains boron, potassium nitrate pellets), 1.4S; and five each of UN0323, Cartridges, power device, 1.4S and UN0454, Igniters, 1.4S; transported by Respondent's employee, Matt Sherman, from a customer's facility to Respondent's facility.
7. Investigator confirmed with Mr. Sherman that he transported the documented box from a client's site back to Respondent's facility. Investigator asked Mr. Sherman to open the box so he could verify its contents, where Investigator observed the four different explosives previously described (See Exhibit 7 to Report No. 24548022). Using each device's manufacturer name, product name, and/or product number, Investigator used PHMSA's explosives approval's database to obtain each explosive's EX number.

a. EX2005020018- Austin Powder A-140S Detonators," classified as UN0255, Detonators, electric, for blasting, 1.4B;

b. EX2015030650- Baker Hughes Secondary Power Igniters, classified as UN0481, Substances, explosive, n.o.s. (contains boron, potassium nitrate pellets), 1.4S;

c. EX2015030653- Baker Hughes Slow Set Power Charges, classified as UN0323, Cartridges, power device, 1.4S; and

d. EX2019084001- Baker Hughes Primary Igniters, classifieds as UN0454, Igniters, 1.4S.

2. Investigator noted that the box was not marked with the UN ID number, proper shipping name, and EX number for the "Austin Powder A-140S Detonators, "Baker Hughes Primary Igniters," and "Baker Hughes Secondary Power igniters."

3. Investigator obtained SDSs for each device and confirmed all to be hazardous materials (See Exhibits 9-12 to Report No. 24548022). Investigator obtained a statement from Respondent's representative acknowledging that Respondent had transported a package of explosives while failing to mark the package with the UN ID number, proper shipping name, and EX number for all of the explosives contained in the package (See Exhibit 6 to Report No. 24548022).

4. On or about June 12 or 13, 2024, Respondent offered for transportation and transported in commerce an explosive hazardous material, UN0323, Cartridges, power device, 1.4S, while failing to mark the UN identification number, proper shipping name, and EX number on a package, in violation of 49 CFR §§ 171.2(a), (b), (e), and (f); 172.300(a)(1); and 172.320.

- Please see Inspection/Investigation Report Number 24548022 at pages 19-21, and the exhibits that accompany this report, which are incorporated herein.

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 August 1, 2024 letter, 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 photographic evidence that it is transporting UN1746, Bromine trifluoride, in the required packagings.
- Violation No.2: Respondent provided photographic evidence that it is now segregating explosives as required by the HMR.
- Violation No.3: Respondent Investigator verified that Respondent created a security plan that meets the requirements of the HMR.
- Violation No.4: Respondent submitted evidence that it provided the required hazmat training.
- Violation No.5: Respondent submitted evidence that it has registered with PHMSA as required.
- Violation No.6: Respondent submitted evidence that it is now properly marking and labelling hazmat packaging packed for shipment.

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]).

TOTAL CIVIL PENALTY PROPOSED

Probable Violation	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	$4,000	$0	$1,000	$3,000
2	$9,300	$0	$2,325	$6,975
3	$7,500	$0	$1,875	$5,625
4	$5,000	$0	$1,250	$3,750
5	$1,200	$0	$300	$900
6	$4,500	$0	$1,125	$3,375
TOTAL	$31,500	$0	$7,875	$23,625

ADDENDUM B

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DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

<u>How do I respond to this Notice of Probable Violation (Notice)?</u>

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)

<u>How do I pay the proposed assessment?</u>

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 withdrawal 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.

<u>Where can I find more information on how PHMSA handles hazardous materials enforcement cases?</u>

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