



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: 9/27/2024

PHMSA Case No.: 24-0095-SH-WE

Respondent: Geostabilization International
10225 Westmoor Drive, Suite 205
Westminster, Colorado 80021
ATTN: Allison Lunsford, Director, Warehousing & Logistics
(allison@gsi.us)

No. of Alleged Violations: 3

Total Proposed Assessment: \$10,950

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.

SAFIYA AKUA
HAMIT BORIE

Digitally signed by SAFIYA
AKUA HAMIT BORIE
Date: 2024.09.27 08:47:05
-04'00'

Safiya Borie, Attorney

Enclosures: Addendum A
Addendum B
Addendum C

SERVICE BY ELECTRONIC MAIL

GENERAL ALLEGATIONS

General Factual Allegations/Averments

1. On February 6, 2024, PHMSA's Investigators conducted an inspection at Respondent's facility in Westminster, Colorado.
2. Allison Lunsford, Director of Warehousing & Logistics, and Joshua Monroe, Director of Safety, represented the company and provided necessary information and documentation.
3. Respondent is an offeror of class 1.4S explosives.
4. As an offeror of hazardous materials, Respondent is a regulated entity subject to the HMR and to the jurisdiction of the Secretary of Transportation, PHMSA's Associate Administrator for Hazardous Materials Safety, and PHMSA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 CFR § 107.301).

SPECIFIC ALLEGATIONSProbable Violation No. 1

Offering for transportation in commerce unapproved/forbidden explosives, “UN0423, Articles, pyrotechnic for technical purposes, 1.4S,” which had not been examined by a laboratory authorized by the Associate Administrator for Hazardous Materials Safety to conduct explosives classification testing or examined, classed, or approved by any other method authorized in 49 CFR 173.56, in violation of 49 CFR §§ 171.2(a), (b), (e) & (i); 173.51(a); 173.54(a); and 173.56(b).

Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by this subchapter 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 this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter or under subchapter A of this chapter.
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 this subchapter or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter.
4. Pursuant to 49 CFR § 171.2(i), no person may certify that a hazardous material is offered for transportation in commerce in accordance with the requirements of this subchapter 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 this subchapter or subchapter A of this chapter. Each person who offers a package containing a hazardous material for transportation in commerce in accordance 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, must assure that the package remains in condition for shipment until it is in the possession of the carrier.
5. Pursuant to 49 CFR § 173.51(a), unless otherwise provided in this subpart, no person may offer for transportation or transport an explosive, unless it has been tested and classed and approved by the Associate Administrator (§ 173.56).

6. Pursuant to 49 CFR § 173.54(a), unless otherwise provided in this subchapter, an explosive that has not been approved in accordance with § 173.56 of this subpart shall not be offered for transportation or transported.
7. Pursuant to 49 CFR § 173.56(b), Except as provided in §§ 173.64, 173.65, and 173.67, no person may offer a new explosive for transportation unless that person has specified to the examining agency the ranges of composition of ingredients and compounds, showing the intended manufacturing tolerances in the composition of substances or design of articles which will be allowed in that material or device, and unless it has been examined, classed and approved as follows:
 - Except for an explosive made by or under the direction or supervision of the Department of Defense (DOD) or the Department of Energy (DOE), a new explosive must be examined and assigned a recommended shipping description, division and compatibility group, based on the tests and criteria prescribed in §§ 173.52, 173.57 and 173.58. The person requesting approval of the new explosive must submit to the Associate Administrator a report of the examination and assignment of a recommended shipping description, division, and compatibility group. If the Associate Administrator finds the approval request meets the regulatory criteria, the new explosive will be approved in writing and assigned an EX number. The examination must be performed by a person who is approved by the Associate Administrator under the provisions of subpart H of part 107 of this chapter and who—
 - i. Has (directly, or through an employee involved in the examination) at least ten years of experience in the examination, testing and evaluation of explosives;
 - ii. Does not manufacture or market explosives, and is not controlled by or financially dependent on any entity that manufactures or markets explosives, and whose work with respect to explosives is limited to examination, testing and evaluation; and
 - iii. Is a resident of the United States.

Factual Allegations/Averments

1. During the inspection of Respondent's facility in Westminster, Colorado on February 6, 2024, PHMSA's investigators observed and photographed 4G fiberboard boxes of explosives at Respondent's facility. (See Exhibit 2 to Report No. 24294002).
 - a. The photographs show 4G boxes with a product label identifying the contents as "Auto Stem / Rock Breaking Cartridges AutoStem Gen 3," displaying a class 1.4S explosive hazmat label and the UN identification number and shipping name "UN0423, Articles, Pyrotechnic for technical purposes."

- b. The shipping label on the box shows:
 - i. Manufacture: OEX Ticaret ve Sanayi Anonim Sirketi, Adalet Manhallesi. Manas Bulvari. Foldart Towers No: 47 B lc Kapi No: 2601 Bayradli, Izmir Turkiye.
 - ii. Consignee: Alternative Blasting Company LLC, 1934 Cedar Street, Ramona, CA USA 92065.
 - iii. UN Classification: UN0423, Articles, Pyrotechnic for technical purposes
 - iv. Quantity of cartridges: 70 units and with an NEQ of 4.55kg.
2. PHMSA's investigators researched the explosive approvals granted to AutoStem and found various ones issued to AutoStem in South Africa with the hazmat basic description of "UN0323, Cartridges, power device, 1.4S," but no explosive approvals to AutoStem in Turkey for "UN0423, Articles, pyrotechnic for technical purposes, 1.4S." (See Exhibit 3 to Report No. 24294002).
3. Respondent's representative provided PHMSA's investigators with copies of shipping documents for its previous shipments in commerce of the AutoStem explosives manufactured in Turkey. (See Exhibit 4 to Report No. 24294002).
 - a. #244001GA0N, dated 1/9/2024 – a shipment of AutoStem devices: thirty-one (31) 40g, sixty-five (65) 100g, seventy (70) 180g, seventeen (17) 300g, and thirty-two (32) 500g from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 44 Dougherty Gap Road, Chickamauga, GA 30707, by Derek Weber.
 - b. #230213AR0N, dated 4/24/2023 shows a shipment of AutoStem devices: thirty-two (32) 550g, thirty-nine (39) 300g, seventy (70) 180g, seventy-two (72) 100g and thirty-one (31) 40g from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 769 Saddler Falls Road, Mammoth Spring, AR 72554, by Steve Van Dyke.
 - c. #230150VT0N, dated 8/23/2023, shows a shipment of AutoStem devices: thirty-one (31) 40g, sixty-seven (67) 1 seventy (70) 180g, twenty-nine (29) 300g, thirty-two (32) 550g, and AutoStem Blaster from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 52 Main Street, Proctor, VT 05765, by Alan Gibbs.
4. Respondent's representative provided PHMSA's investigators with a copy of the safety data sheet for the explosives, which indicates that it is a hazardous material. (See Exhibit 5 to Report No. 24294002).
 - a. Safety data sheet for AutoStem Cartridges -- Section 14: UN0323, Cartridges, Power Device, 1.4S.

On or about January 9, 2024, Respondent offered for transportation in commerce unapproved/forbidden explosives, "UN0423, Articles, pyrotechnic for technical purposes, 1.4S", which had not been examined by a laboratory authorized by the Associate Administer for

Hazardous Materials Safety to conduct explosives classification testing or examined, classed, or approved by any other method authorized in 49 CFR 173.56, in violation of the HMR.

- Please see Inspection/Investigation Report Number 24294002 at pages 3-6, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 2

Offering for transportation in commerce a hazardous material, “UN0423, Articles, pyrotechnic for technical purposes, 1.4s,” while failing to provide a shipping paper, in violation of 49 CFR §§ 171.2(a),(b),(e)&(i), 172, 200(a), 172.201(a), 172.202(a) and 177.817(a).

Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by this subchapter must perform that function in accordance with this subchapter.
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 this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter or under subchapter A of this chapter.
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 this subchapter or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter.
4. Pursuant to 49 CFR § 171.2(i), no person may certify that a hazardous material is offered for transportation in commerce in accordance with the requirements of this subchapter 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 this subchapter or subchapter A of this chapter. Each person who offers a package containing a hazardous material for transportation in commerce in accordance 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, must assure that the package remains in condition for shipment until it is in the possession of the carrier
5. 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.
6. Pursuant to 49 CFR § 172.201, when a description of hazardous material is required to be included on a shipping paper, that description must conform to the requirements of this

section; a shipping paper must have a continuation page is more than one page; 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, as prescribed in subpart G of this part; and each person who provides a shipping paper must retain a copy of the shipping paper as by this section.

7. Pursuant to 49 CFR § 172.202(a), the shipping description of a hazardous material on the shipping paper must include:
 - The identification number prescribed for the material as shown in Column (4) of the § 172.101 table;
 - The proper shipping name prescribed for the material in Column (2) of the § 172.101 table;
 - The hazard class or division number prescribed for the material, as shown in Column (3) of the § 172.101 table.
 - The packing group in Roman numerals, as designated for the hazardous material in Column (5) of the § 172.101 table.
 - The total quantity of hazardous materials covered by the description must be indicated.
 - The number and type of packages must be indicated.
8. Pursuant to 49 CFR § 177.817(a), a person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter or the material is excepted from shipping paper requirements under this subchapter. A subsequent carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with part 172 of this subchapter, except for § 172.204, which is not required.

Factual Allegations/Averments

1. During the inspection of Respondent's facility in Westminster, Colorado on February 6, 2024, Respondent's representative provided PHMSA's investigators with copies of shipping documents for its previous shipments in commerce of the AutoStem explosives manufactured in Turkey. (See Exhibit 4 to Report No. 24294002).
 - a. #244001GA0N, dated 1/9/2024 – a shipment of AutoStem devices: thirty-one (31) 40g, sixty-five (65) 100g, seventy (70) 180g, seventeen (17) 300g, and thirty-two (32) 500g from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 44 Dougherty Gap Road, Chickamauga, GA 30707, by Derek Weber.

- b. #230213AR0N, dated 4/24/2023 shows a shipment of AutoStem devices: thirty-two (32) 550g, thirty-nine (39) 300g, seventy (70) 180g, seventy-two (72) 100g and thirty-one (31) 40g from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 769 Saddler Falls Road, Mammoth Spring, AR 72554, by Steve Van Dyke.
 - c. #230150VT0N, dated 8/23/2023, shows a shipment of AutoStem devices: thirty-one (31) 40g, sixty-seven (67) 180g, twenty-nine (29) 300g, thirty-two (32) 550g, and AutoStem Blaster from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 52 Main Street, Proctor, VT 05765, by Alan Gibbs.
 - i. The shipping documents do not meet the shipping paper requirements.
- 2. Respondent's representative provided PHMSA's investigators with a copy of the safety data sheet for the explosives, which indicates that it is a hazardous material. (See Exhibit 5 to Report No. 24294002).
 - a. Safety data sheet for AutoStem Cartridges -- Section 14: UN0323, Cartridges, Power Device, 1.4S.

On or about January 9, 2024, Respondent offered for transportation in commerce a hazardous material, "UN0423, Articles, pyrotechnic for technical purposes, 1.4s," while failing to provide a shipping paper, in violation of the HMR.

- Please see Inspection/Investigation Report Number 24294002 at pages 7-10, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 3

Offering for transportation in commerce a hazardous material, "UN0423, Articles, pyrotechnic for technical purposes, 1.4S", while failing to provide initial training to hazmat employees in general awareness/familiarization, function-specific, safety and security awareness, in violation of 49 CFR §§ 171.2(a)&(b), 172.700(a), 172.702(a)&(b), 172.704(a)(1)-(4), 172.704(c)(1).

Regulatory Standard

- 1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by this subchapter must perform that function in accordance with this subchapter.
- 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 this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter or under subchapter A of this chapter.

3. Pursuant to 49 CFR § 172.700(a), this subpart prescribes requirements for training hazmat employees.
4. 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 this subpart.
5. Pursuant to 49 CFR § 172.702(b), a hazmat employee who performs any function subject to the requirements of this subchapter 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.
6. Pursuant to 49 CFR § 172.704(a)(1)-(4), hazmat employee training must include general awareness/familiarization training, function-specific training, safety training, and security training.
7. Pursuant to 49 CFR § 172.704(c)(1), a new hazmat employee, or a hazmat employee who changes job functions may perform those functions prior to the completion of training provided:
 - The employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and
 - The training is completed within 90 days after employment or a change in job function.

Factual Allegations/Averments

1. During inspection of Respondent's facility in Westminster, Colorado on February 6, 2024, Respondent's representative was unable to provide the hazmat training records for Respondent's hazmat employees.
2. Respondent's representative provided PHMSA's investigators with copies of shipping documents for its previous shipments of hazardous materials in commerce. (See Exhibit 4 to Report No. 24294002).
 - a. #244001GA0N, dated 1/9/2024 – a shipment of AutoStem devices: thirty-one (31) 40g, sixty-five (65) 100g, seventy (70) 180g, seventeen (17) 300g, and thirty-two (32) 500g from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 44 Dougherty Gap Road, Chickamauga, GA 30707, by Derek Weber.
 - b. #230213AR0N, dated 4/24/2023 shows a shipment of AutoStem devices: thirty-two (32) 550g, thirty-nine (39) 300g, seventy (70) 180g, seventy-two (72) 100g and thirty-one (31) 40g from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 769 Saddler Falls Road, Mammoth Spring, AR 72554, by Steve Van Dyke.

- c. #230150VT0N, dated 8/23/2023, shows a shipment of AutoStem devices: thirty-one (31) 40g, sixty-seven (67) 1 seventy (70) 180g, twenty-nine (29) 300g, thirty-two (32) 550g, and AutoStem Blaster from Respondent's facility at 450 South Main, Williamstown, KY 41097 to 52 Main Street, Proctor, VT 05765, by Alan Gibbs.
3. Respondent's representative provided PHMSA's investigators with a copy of the safety data sheet for the explosives, which indicates that it is a hazardous material. (See Exhibit 5 to Report No. 24294002).
 - a. Safety data sheet for AutoStem Cartridges -- Section 14: UN0323, Cartridges, Power Device, 1.4S.

On or about January 9, 2024, Respondent offered for transportation in commerce a hazardous material, "UN0423, Articles, pyrotechnic for technical purposes, 1.4S", while failing to provide initial training to hazmat employees in general awareness/familiarization, function-specific, safety and security awareness, in violation of the HMR.

- Please see Inspection/Investigation Report Number 24294002 at pages 11-14, 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.

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 May 11, 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 has stopped all shipments of Turkish made "UN0423, Articles, pyrotechnic for technical purposes, 1.4s," separated them from other devices, and marked them with "Do not use or transport-destined for destruction." (See Exhibit 6 to Report No. 24294002).
 - Based on this information and documentation, the proposed penalty has been reduced by 25% (as indicated below).
- Violation No.2: Respondent has produced and provided a copy of shipping papers for future shipments of hazardous materials. (See Exhibit 6 to Report No. 24294002).
 - Based on this information and documentation, the proposed penalty has been reduced by 25% (as indicated below).

- Violation No.3: Respondent has revised its hazmat training using the PHMSA modules and provided it to its hazmat employees. (See Exhibit 6 to Report No. 24294002).
 - Based on this information and documentation, the proposed penalty has been reduced by 25% (as indicated below).
- Violation No.4: Respondent has created safety data sheet binders for each of its trucks and provided photographs of the binders. (See Exhibit 15 to Report No. 24294002).
 - 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	\$5,000	\$0 [0% increase]	(\$1,250) [25% reduction]	\$3,750
2	\$5,600	\$0 [0% increase]	(\$1,400) [25% reduction]	\$4,200
3	\$4,000	\$0 [0% increase]	(\$1,000) [25% reduction]	\$3,000
TOTAL	\$14,600	\$0	(\$3,650)	\$10,950

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.)

Addendum B

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

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

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

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

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

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

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

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