



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 Electronically Issued: April 22, 2025

PHMSA Case No.: 24-0206-CR-SO

Respondent: Discount Propane, Inc.
140 Ft. Florida Road
DeBary, Florida 32713
ATTN: William D. Allen, President

No. of Alleged Violations: 2

Total Proposed Assessment: \$3,900

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, fax, or express mail.**

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

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

The Case Exhibits have been supplied to you via a secure large file transfer link. If receiving the Case Exhibits in electronic format creates an undue hardship for you, please contact me.

BRITTANY
SIGRID BESSER

Digitally signed by BRITTANY
SIGRID BESSER
Date: 2025.05.07 10:19:31 -04'00'

Brittany S. Besser, Attorney

Enclosures: Addendum A
Addendum B
Addendum C

SERVICE BY ELECTRONIC MAIL

ADDENDUM A

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GENERAL ALLEGATIONS

General Factual Allegations/Averments

1. On July 24, 2024, PHMSA's Investigator conducted an announced compliance inspection at Respondent's facility in DeBary, Florida (see Inspection Report No. 24415020 at page 1).
2. Todd Allen, CEO, and Bonnie Sweat, Facility Manager, represented the company and provided any necessary documentation (see Inspection Report No. 24415020 at page 1).
3. Respondent is a "UN1075, Propane, 2.1" service and supply company. Respondent requalifies DOT-specification cylinders using the visual only method and holds VIN: V110019. Respondent also ships and transports bulk quantities of propane on its own bobtail trucks, as well as smaller cylinders on its own trucks (see Inspection Report No. 24415020 at page 1).
4. As a VIN-holder and transporter of hazardous materials, Respondent is a regulated entity subject to the HMR and to the jurisdiction of the Secretary of Transportation, PHMSA's Associate Administrator for Hazardous Materials Safety, and PHMSA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 CFR § 107.301).

SPECIFIC ALLEGATIONS

Probable Violation No. 1

Allowing an employee to perform a function subject to the requirements of the Federal hazardous materials regulations, when the employee had not received initial hazardous materials training in the areas of general awareness, function-specific, safety and security awareness, in violation of 49 CFR §§ 172.702(a); 172.704(a)(1-4); and 172.704(c)(1).

Regulatory Standard

1. 49 CFR § 172.702(a) states: "A hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements prescribed in this subpart."
2. 49 CFR § 172.704(a) states, in part: "Hazmat employee training must include the following:
 - (1) General awareness/familiarization training;
 - (2) Function-specific training;
 - (i) Each hazmat employee must be provided function-specific training concerning requirements of this subchapter, or exemptions or special permits.

(3) Safety training;

(4) Security awareness training.”

3. 49 CFR § 172.704(c)(2) states: “Recurrent training. A hazmat employee must receive the training required by this subpart at least once every three years...For in-depth security training required under paragraph(a)(5) of this section, a hazmat employee must be trained at least once every three years or, if the security plan for which training is required is revised during the three-year recurrent training cycle, within 90 days of implementation of the revised plan.”

Factual Allegations/Averments

1. During the inspection, the Investigator learned that Respondent delivered large bulk quantities of propane on its bobtail trucks and smaller cylinders of propane on its own trucks as well (see Inspection Report No. 24415020 at page 3).
2. The Investigator requested hazardous materials training documents and records for hazmat employees, which included Mr. Allen, CEO and Re-Tester, employed approximately eight (8) years with the company; Mr. Chris Byrd, driver, employed approximately seven (7) years with the company; and Mr. Russell Heggan, Service Technician, employed approximately seven (7) years with the company (see Inspection Report No. 24415020 at page 3).
3. Mr. Allen and Ms. Sweat provided the Investigator with training records that covered all five areas (general awareness, safety awareness, function-specific, security awareness, and in-depth security awareness), however, the training was completed in January 2021, thus not within the required three (3) year period (see Inspection Report No. 24415020 at page 3 and Exhibit 2 to Report No. 24415020).
4. The Investigator completed the Pipeline and Hazardous Materials Safety Administration Security Inspection Report, citing a Security Plan was in place, but in-depth security training was not current (see Inspection Report No. 24415020 at page 3 and Exhibit 3 to Report No. 24415020).
5. The Investigator obtained the following shipping documents for shipments of large bulk quantities of propane, via truck #2301, with a water capacity of 3,000 gallons :
 - a. DP Drivers Daily Report, dated July 22, 2024, denoting the shipment and transportation of “1 Cargo Tank,” or 1,590 gallons, via truck #2301, from Discount Propane, Inc., 450 S. Shell Road, DeBary, FL 32713 to various customers (see Inspection Report No. 24415020 at page 4 and Exhibit 4, pages 1-3, to Report No. 24415020);
 - b. DP Drivers Daily Report, dated July 19, 2024, denoting the shipment and transportation of “1 Cargo Tank,” or 1,680 gallons, via truck #2301, from Discount Propane, Inc., 450 S. Shell Road, DeBary, FL 32713 to various customers (see

Inspection Report No. 24415020 at page 4 and Exhibit 4, pages 1,4, and 5, to Report No. 24415020); and

- c. DP Drivers Daily Report, dated July 18, 2024, denoting the shipment and transportation of “1 Cargo Tank,” or 690 gallons, via truck #2301, from Discount Propane, Inc., 450 S. Shell Road, DeBary, FL 32713 to various customers (see Inspection Report No. 24415020 at page 4 and Exhibit 4, pages 1, 6, and 7, to Report No. 24415020).
6. The Investigators also obtained the following shipping papers, denoting the transportation (delivery and pick-up) of propane cylinders via truck #16-01:
 - a. DP Servicemans Daily Report, dated July 22, 2024, denoting the delivery of seventy-three (73) cylinders from Discount Propane to various customers (see Inspection Report No. 24415020 at page 4 and Exhibit 5, pages 1 and 2, to Report No. 24415020);
 - b. DP Servicemans Daily Report, dated July 19, 2024, denoting the delivery of fifty (50) cylinders from Discount Propane to various customers (see Inspection Report No. 24415020 at page 4 and Exhibit 5, pages 1 and 3, to Report No. 24415020); and
 - c. DP Servicemans Daily Report, dated July 18, 2024, denoting the delivery of sixty-seven (67) cylinders from Discount Propane to various customers (see Inspection Report No. 24415020 at page 4 and Exhibit 5, pages 1 and 4, to Report No. 24415020).
7. The Investigator obtained a Safety Data Sheet (SDS) for propane, dated September 17, 2021, which confirmed the material as hazardous (see Inspection Report No. 24415020 at page 4 and Exhibit 6 to Report No. 24415020).
8. The Investigator discussed the training and testing requirements with Mr. Allen and Ms. Sweat, and the investigator stressed the importance of completing recurrent hazardous materials training within the allotted three (3) year window. Training record documentation was also discussed. They stated they understood the requirements and that Respondent would take the necessary actions to comply with the regulations (see Inspection Report No. 24415020 at page 4).
9. On or about July 18, 19, and 22, 2024, Respondent allowed an employee to perform a function subject to the requirements of the Federal hazardous materials regulations, when the employee had not received initial hazardous materials training in the areas of general awareness, function-specific, safety and security awareness, in violation of 49 CFR §§ 172.702(a); 172.704(a)(1-4); and 172.704(c)(1).

- Please see Inspection/Investigation Report Number 24415020 at pages 3-5, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 2

Representing, certifying, and marking cylinders as having been successfully re-qualified, while having failed to maintain complete and accurate daily records of retest, in violation of 49 CFR §§ 180.209(g) and 180.215(b)(2).

Regulatory Standard

1. 49 CFR § 180.209(g) states, in part: “Records must include: Date of inspection (month and year); DOT-specification number; cylinder identification (registered symbol and serial number, date of manufacture, and owner); type of cylinder protective coating (including statement as to need of refinishing or recoating); conditions checked (e.g., leakage, corrosion, gouges, dents or digs in shell or heads, broken or damaged footing or protective ring or fire damage); and disposition of cylinder (returned to service, returned to cylinder manufacturer for repairs or condemned).”
2. 49 CFR § 180.215(b) states, in part: “The records must include the following information: The date of requalification; serial number; DOT specification or special permit number; marked pressure; actual dimensions; manufacturer’s name or symbol; owner’s name or symbol, if present; result of visual inspection...disposition, with reason for any repeated test, rejection or condemnation; and legible identification of test operator.”

Factual Allegations/Averments

1. During the inspection, the Investigator interviewed Mr. Allen, who was one of the retest operators responsible for conducting the visual inspections and re-qualifications of the cylinders, as authorized by the letter dated June 21, 2022, from the Associate Administrator for Hazardous Materials Safety (see Inspection Report No. 24415020 at page 6 and Exhibit 7 to Report No. 24415020).
2. The investigator also examined visual requalification test records dated January 19, 2024, back to October 5, 2023 (see Inspection Report No. 24415020 at page 6 and Exhibit 8 to Report No. 24415020).
3. The records reviewed were not documented as required by 49 CFR §§ 180.209(g) and 180.215(b)(2). Specifically, the records did not include a column for the name of the cylinder owner (see Inspection Report No. 24415020 at page 6 and Exhibit 8 to Report No. 24415020).
4. The Investigator inquired further about the missing actual dimensions and the “Tank Ownership” column. Mr. Lambeth explained that the test records were templates provided from NC’s parent company and he was not aware of the actual dimensions requirement. He further explained that the “NC” in the “Tank Ownership” column stood

for North Carolina, as in, North Carolina Propane Exchange (see Inspection Report No. 24415020 at page 6 and Exhibit 8 to Report No. 24415020).

5. The Investigator asked Mr. Lambeth about the ownership status of the cylinders NC tested, and he stated that the cylinders either belonged to NC or one of their customers, Roberts Oxygen. The Investigator confirmed with Mr. Lambeth that he had tested and requalified cylinders that were owned by Roberts Oxygen but failed to annotate that on his test records (see Inspection Report No. 24415020 at pages 6-7 and Exhibit 8 to Report No. 24415020).
6. The Investigator stressed to Mr. Lambeth the importance of filling out the test records accurately and completely, and he stated he understood the violation as noted and would take the necessary steps to remedy it. Mr. Lambeth also said that he would reach out to his parent company to inform them of the Investigator's findings and to ensure that they are complying with the hazardous materials regulations (HMR) (see Inspection Report No. 24415020 at page 7).
7. On or about October 5, 2023, through January 19, 2024, Respondent represented, certified, and marked cylinders as having been successfully re-qualified, while having failed to maintain complete and accurate daily records of retest, in violation of 49 CFR §§ 180.209(g) and 180.215(b)(2).

- Please see Inspection/Investigation Report Number 24415020 at pages 6-7, 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 at this facility, 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 28, 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 trained and tested all its hazmat employees, including Mr. Allen, Mr. Byrd, and Mr. Heggan, and made records of such (see Inspection Report No. 24415020 at pages 8 and Exhibit 9, pages 1-4, to Report No. 24415020).
- Violation No.2: Respondent has revised its test logs to include the owner's name or symbol (if known) and dimensions of the cylinder (see Inspection Report No. 24415020 at pages 8 and Exhibit 9, pages 5, to Report No. 24415020).

Based on this information and documentation, the proposed penalty has been reduced by 25% for Violation 1 and 25% for Violation 2 (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	\$1,200	+\$0	-\$300	\$900
TOTAL	\$5,200	+\$0	-\$1,300	\$3,900

ADDENDUM B

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

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

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

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

How do I pay the proposed assessment?

You pay the proposed assessment by:

- (1) Sending a wire transfer, through the Federal Reserve Communications System (Fedwire), to the U.S. Treasury account (49 C.F.R. § 89.21(b)(3)). Addendum C contains the instructions for sending wire transfers. Questions concerning wire transfers should be directed to: DOT/PHMSA/MMAC, AMK-325/HQ-RM 181 6500 S MacArthur Blvd., Oklahoma City, OK 73169 (Telephone No. (405) 954-9309).

Or

- (2) Sending a certified check or money order if the penalty amount is \$10,000 or less. The certified check or money order must be payable to the "U.S. Department of Transportation" and must be mailed to: DOT/PHMSA/MMAC, AMK-325/HQ-RM 181 6500 S MacArthur Blvd., Oklahoma City, OK 73169 (Telephone No. (405) 954-9309).

Or

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

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

Where do I send my response?

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

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

When is my response due? (§ 107.313)

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

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

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

May I propose a compromise offer? (§ 107.327)

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

If a compromise is agreeable to all parties, the attorney handling the case will forward a compromise agreement to you for signature. This document will outline the terms of the joint agreement and you must return a signed original to the attorney handling the case within 30 days. After this agreement has been returned it will be signed by the assigned attorney and presented to the Chief Counsel with a request that the Chief Counsel adopt the terms of that agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of the agreement constitute an offer of compromise until accepted by the Chief Counsel. When you agree to a compromise, you give up your right to appeal the order issued by the Chief Counsel.

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

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

May I request an informal conference? (§ 107.317)

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

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

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

How do I appeal an order? (§ 107.325)

You may appeal an order to PHMSA's

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

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

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

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

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

How does PHMSA determine if I have committed a violation?

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

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

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

- (1) The nature and circumstances of the violation(s);
- (2) The extent and gravity of the violation(s);
- (3) The degree of your culpability;
- (4) Your history, if any, of prior offenses;
- (5) Your ability to pay the penalty;
- (6) The effect of the penalty on your ability to continue in business;
- (7) The size of your business, and
- (8) Other matters as justice may require.

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

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

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

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

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

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

The Pipeline and Hazardous Materials Safety Administration strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

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

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

ADDENDUM C

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

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