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: May 29, 2024

PHMSA Case No.: 23-0147-PC-SO

Respondent: Superior Tote Solutions, Inc.
401 North Main Street
Summitville, Indiana 46070
ATTN: Shawn McGuire, President

No. of Alleged Violations: 7

Total Proposed Assessment: $31,905

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, 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: 2024.05.29 16:42:27 -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 March 29 and 30, 2023, PHMSA's Investigator conducted an inspection at Respondent's facility in Summitville, Indiana.
2. Shawn McGuire, President; Michael McGuire, Operations Executive; and Kelly Burcharts, Operations Manager, represented the company during this inspection providing information, a tour of the facility, and necessary documentation.
3. Respondent provides routine maintenance and repair services of 275 and 330-gallon composite UN Standard Intermediate Bulk Containers (IBCs), while also performing inspections and leakproofness testing of said packaging.
4. IBC units are vended to customers with two tractor-trailers making daily routes throughout Indiana and Ohio as well as customers arriving on-site to collect them.
5. Respondent holds a DOT/PHMSA manufacturer's approval number M6245 and has fifteen (15) hazardous materials employees.
6. As a manufacturer of packaging marked and certified as meeting HMR requirements, 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

Remanufacturing, marking, representing, and selling composite Intermediate Bulk Containers (IBCs), certified to UN Standard 31HA1, as meeting the requirements of the Hazardous Materials Regulations (HMR), when design qualification testing was not conducted, in violation of 49 CFR §§ 171.2(a), (c), (g), (h), (j); 178.2(b)(1); 178.801(b) & (d); and 180.350(a).

Regulatory Standard

1. 49 CFR § 178.801(d) states, in part: "Design qualification testing. The packaging manufacturer shall achieve successful test results for the design qualification testing at the start of production of each new or different IBC design type."
2. 49 CFR § 180.350(a) states, in part: "Remanufactured IBCs are metal, rigid plastic or composite IBCs produced as a UN type from a non-UN type, or are converted from one UN design type to another UN design type. Remanufactured IBCs are subject to the same requirements of this subchapter that apply to new IBCs of the same type."

Factual Allegations/Averments

1. During the course of this inspection, the Investigators were escorted by Respondent's Representatives through various production areas where composite UN IBCs of 275 and 330-gallon designs undergo routine maintenance, inspections, repairs, reconditioning, and remanufacturing. The Investigators also toured storage areas of inbound work and observed finished units ready for sale and shipment (see Inspection Report No. 23248002 at page 3 and Exhibit 2 to Report No. 23248002).
2. The Investigators were shown a receiving area with many types of composite UN IBCs, manufactured by all the major packaging companies, such as Schutz, Mauser, Greif, Encore, Centurian, and others. The IBCs were still marked with the respective manufacturers' UN certification markings, empty, and many with markings and labels of their former contents removed (see Inspection Report No. 23248002 at page 3 and Exhibit 2 to Report No. 23248002).
3. The Investigators were told that the IBCs are sorted for which production line they needed to be processed through, with the majority going to the reconditioning line to be stripped of all makings and labels, cleaned, dried, visually inspected, have routine maintenance performed (such as closure replacement and cage adjustments), and then pressure tested and remarked with a UN certification (see Inspection Report No. 23248002 at page 3 and Exhibit 27 to Report No. 23248002).
4. Some IBCs only need a "wash and return." Other IBCs that used to contain adhesives, had inner plastic bottles damaged or discolored, or had the inner bottles fail pressure testing are sent to the "rebottling" line to have the original bottle replaced with a new bottle from CORE Plastech, Inc. (CORE), located in Illinois (see Inspection Report No. 23248002 at pages 3-4 and Exhibit 27 to Report No. 23248002).
5. The Investigators asked if all UN IBC bottle replacements are done with CORE bottles, regardless of the IBC manufacturer, and were informed that was correct (see Inspection Report No. 23248002 at page 4 and Exhibit 27 to Report No. 23248002).
6. The Investigators were shown an inventory of the plastic bottles manufactured by CORE which were typically used for all IBC bottle replacements. These were 275-gallon plastic bottles with a lower ball valve and a six-inch top opening and plastic cap with gasket. On top of the bottle was CORE's full company address in Illinois. These bottles were noted to be stored inside a trailer next to a loading dock outside the warehouse (see Inspection Report No. 23248002 at page 4 and Exhibit 3 to Report No. 23248002).
7. Continuing the tour with Respondent's Representatives, the Investigators were escorted to the "rebottling" area where there was a small inventory of empty IBCs stored for processing (see Inspection Report No. 23248002 at page 4 and Exhibit 4, pages 1-4, to Report No. 23248002).
8. On the floor were five (5) empty cages where the plastic bottles had been removed and were waiting on new CORE bottles to be installed. The original manufacturers' UN

certification markings had not yet been removed from the cages and gave an indication of who the manufacturers were (see Inspection Report No. 23248002 at page 4 and Exhibit 4, pages 5-8, to Report No. 23248002).

9. One cage displayed a UN certification of a UN 31HA1 composite IBC, with the manufacturers symbol marked as “M4119,” and year of manufacture as “1022,” which is Mauser USA, LLC in Anniston, Alabama, who produced that unit in October 2022 (see Inspection Report No. 23248002 at page 4 and Exhibit 4, pages 9-10, and Exhibit 5 to Report No. 23248002).

10. Another IBC cage was marked as UN 31HA1, with “GBC” and year of manufacture as “1022,” and was marked within the certification to indicate that Greif Brothers Corporation was the manufacturer of the unit in October 2022 (see Inspection Report No. 23248002 at page 4 and Exhibit 4, pages 11-12, to Report No. 23248002).

11. A third IBC cage was marked as UN 31HA1, with the manufacturers symbol “M6076” and year of manufacture as “0123,” and was marked within the certification to indicate that Encore of Greenville, LLC was the manufacturer in January 2023 (see Inspection Report No. 23248002 at page 4 and Exhibit 4, pages 13-16, and Exhibit 6 to Report No. 23248002).

12. The Investigators again asked if the inventory of CORE plastic bottles just examined are the bottles that will be installed in these cages and were informed that indeed they would be (see Inspection Report No. 23248002 at page 4 and Exhibit 27 to Report No. 23248002).

13. After the “rebottling area” the Investigators were shown a section of the warehouse where finished rebottled IBCs were stored. The Investigators observed various types of used IBC cages from major IBC manufacturers, such as Schutz, Mauser, Greif, and others (see Inspection Report No. 23248002 at page 4 and Exhibit 7 to Report No. 23248002).

14. Inside the cages were new plastic bottles manufactured by CORE, and every IBC was marked with a UN certification marking of UN 31HA1 and with Respondent’s “M” number, “M6245,” as the IBC manufacturer within the UN string and a current manufacturing date of March 2023 (see Inspection Report No. 23248002 at page 4 and Exhibit 8 to Report No. 23248002).

15. The Investigators selected at random an exemplar IBC to examine, which consisted of a steel cage manufactured by Mauser that contained a 275-gallon CORE bottle inside. The cage contained a metal plate affixed and embossed with “Mauser,” and the inner plastic bottle was embossed with CORE’s “M” number of “M6648,” as well as CORE’s name and address in Illinois. The UN certification marking on the cage declared Respondent was the manufacturer, as their “M" number of “M6245” was within the UN string. The marking was noted as follows: “UN 31HA1/Y/1122/USA/M6245/3800KG/1725/1041L/58Kg100KPa/1122/1122” (see Inspection Report No. 23248002 at page 4 and Exhibit 7, pages 9-18, and Exhibit 9 to Report No. 23248002).

16. The investigators reconvened with Respondent's Representatives in the conference room and discussed what was just shown to them during the tour. The Investigators inquired as to why CORE's plastic bottle was being used in all the various IBC manufacturers' units, instead of each respective manufacturers' bottles, and were informed that would be complicated to manage in a mixed inventory, and the manufacturers probably would not sell bottles to them anyway (see Inspection Report No. 23248002 at page 4 and Exhibit 27 to Report No. 23248002).

17. The Investigators explained that in doing so it was considered "cross bottling" and is also a packaging design change called "remanufacturing." Respondent had remanufactured the IBCs in their own name, which would require UN performance testing and a new certification. The Investigators then asked for copies of the test reports for each respective new design (see Inspection Report No. 23248002 at pages 4-5 and Exhibit 27 to Report No. 23248002).

18. No test reports were provided because testing had not been performed, and Respondent's Representatives were unfamiliar with these requirements. The Investigators further stated that Respondent's remanufactured IBCs were unauthorized designs and sales of them should be discontinued until design qualification testing and proper certification could be completed (see Inspection Report No. 23248002 at page 5 and Exhibit 27 to Report No. 23248002).

19. Respondent's Representative provided six (6) invoices from a third-party broker, MPH United, LLC and related Bills of Lading (BOLs), denoting the purchase by Respondent and shipment of 275-gallon plastic bottles from CORE in South Holland and Springfield, Illinois to Respondent in Summitville, Indiana. The invoices state that "275-gallon new bottle reconditioned cage UN" were procured, suggesting that bottles and cages were shipped. However, this was clarified to mean the bottles are "intended for reconditioned cages"; the BOLs all indicate that only 275-gallon plastic bottles were the goods on board the transport vehicles:

   a. Invoice 2662 and 2663, both dated January 27, 2023, and related BOLs, each indicted that ninety (90) 275-gallon plastic bottles were the contents of the consignments (see Inspection Report No. 23248002 at page 5 and Exhibit 10 to Report No. 23248002);

   b. Invoice 2718, dated February 10, 2023, and related BOL, indicated that ninety (90) 275-gallon plastic bottles were the contents of the consignment (see Inspection Report No. 23248002 at page 5 and Exhibit 11 to Report No. 23248002);

   c. Invoice 2749, dated February 23, 2023, and related BOL, indicated that ninety (90) 275-gallon plastic bottles were the contents of the consignment (see Inspection Report No. 23248002 at page 5 and Exhibit 12 to Report No. 23248002);

   d. Invoice 2813, dated March 13, 2023, and related BOL, indicated that ninety (90) 275-gallon plastic bottles were the contents of the consignment (see Inspection Report No. 23248002 at page 5 and Exhibit 13 to Report No. 23248002); and

e. Invoice 2861, dated March 26, 2023, and related BOL, indicated that ninety (90) 275-gallon plastic bottles were the contents of the consignment (see Inspection Report No. 23248002 at page 5 and Exhibit 14 to Report No. 23248002).

20. Respondent demonstrated an active history of vending and shipping similar remanufactured 275-gallon IBCs with new CORE bottles in various manufacturers' reconditioned cages. Respondent's Representative provided three (3) company invoices, BOLs, and related documents, denoting the sale and shipment of such IBCs from Respondent to their customers. Each invoice identifies the contents as "275 Gallon New Bottle Reconditioned Cage UN Certified":

a. STS Invoice number 8214, dated March 16, 2023, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to Morral Companies, 132 Postle Street, Morral, Ohio 43337 (see Inspection Report No. 23248002 at page 5 and Exhibit 15 to Report No. 23248002);

b. STS Invoice number 8154, dated February 27, 2023, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to Geo Pfau's Sons Co., 800 Wall Street, PO Box 7, Jeffersonville, Indiana 47130 (see Inspection Report No. 23248002 at page 5 and Exhibit 16 to Report No. 23248002); and

c. STS Invoice number 8042, dated December 22, 2022, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to Micronutrients, 1950 Stout Field W. Drive, Indianapolis, Indiana 46241 (see Inspection Report No. 23248002 at page 5 and Exhibit 17 to Report No. 23248002).

21. On or about December 22, 2022; February 27, 2023; and March 16, 2023, Respondent remanufactured, marked, represented, and sold composite Intermediate Bulk Containers (IBCs), certified to UN Standard 31HA1, as meeting the requirements of the Hazardous Materials Regulations (HMR), when design qualification testing was not conducted, in violation of 49 CFR §§ 171.2(a), (c), (g), (h), (j); 178.2(b)(1); 178.801(b) & (d); and 180.350(a).

- Please see Inspection/Investigation Report Number 23248002 at pages 3-6, and the exhibits that accompany this report, which are incorporated herein.

<u>Probable Violation No. 2</u>

Remanufacturing, repairing, representing, marking, and selling composite Intermediate Bulk Containers (IBCs), certified to UN 31HA1, as meeting the requirements of the Hazardous Materials Regulations (HMR), when the leak proofness test was not conducted, in violation of 49 CFR §§ 171.2(a), (c), (g), (h), & (j); 178.2(b); 178.813(c); 180.3(a); and 180.352(b)(1) & (d)(ii).

<u>Regulatory Standard</u>

1. 49 CFR § 178.813(c) states: "The leakproofness test must be carried out for a suitable length of time using air at a gauge pressure of not less than 20 kPa (2.9 psig). Leakproofness of IBC design types must be determined by coating the seams and joints with a heavy oil, a soap solution and water, or other methods suitable for the purpose of detecting leaks. Other methods, if at least equally effective, may be used in accordance with appendix B of this part, or if approved by the Associate Administrator, as provided in §178.801(i))."
2. 49 CFR § 180.352(b)(1) states: "Each IBC intended to contain solids that are loaded or discharged under pressure or intended to contain liquids must be tested in accordance with the leakproofness test prescribed in §178.813 of this subchapter prior to its first use in transportation and every 2.5 years thereafter, starting from the date of manufacture or the date of a repair conforming to paragraph (d)(1) of this section. For this test, the IBC is not required to have its closures fitted."
3. 49 CFR § 180.352(d)(ii) states: "Except for flexible and fiberboard IBC's and the bodies of rigid IBC's and composite IBC's, damaged IBC's may be repaired and the inner receptacles of composite packagings may be replaced and returned to service provided: An IBC intended to contain liquids or solids that are loaded or discharged under pressure is subjected to a leakproofness test as specified in §178.813 of this section."

<u>Factual Allegations/Averments</u>

1. As established, Respondent had been removing the inner plastic bottles from steel cages of composite UN IBCs and replacing the bottles with new plastic bottles as part of a repair, which requires leakproofness testing, and this test was not being carried out (see Inspection Report No. 23248002 at page 7 and Exhibit 3 to Report No. 23248002).
2. Specifically, the Investigators were shown an inventory of plastic bottles manufactured by CORE, typically used for all IBC bottle replacements. These were 275-gallon plastic bottles with a lower ball valve and a six-inch top opening and plastic cap with gasket. On top of the bottle was CORE's full company address in Illinois. These bottles were noted to be stored inside a trailer next to a loading dock outside the warehouse (see Inspection Report No. 23248002 at page 7 and Exhibit 3 to Report No. 23248002).
3. During the tour Respondent's Representatives, the Investigators were escorted to the "rebottling" area where older used plastic bottles were removed from IBC steel cages and the new bottles were inserted and secured (see Inspection Report No. 23248002 at page 7 and Exhibit 4, pages 5-8, to Report No. 23248002).
4. On the floor were five (5) empty cages where the plastic bottles had been removed and were waiting on new CORE bottles to be installed. The original manufacturers' UN certification markings had not yet been removed from the cages and gave an indication of

who the manufacturers were (see Inspection Report No. 23248002 at page 7 and Exhibit 4, pages 5-8, to Report No. 23248002).

5. The Investigators again asked if the inventory of CORE plastic bottles just examined are the bottles that will be installed in these cages and were informed that indeed they would be (see Inspection Report No. 23248002 at page 7 and Exhibit 27 to Report No. 23248002).

6. The Investigators did not observe any pressure test equipment in the immediate area and inquired as to what occurs next after the new bottles are installed and secured in the cages. Respondent's Representatives explained that the IBCs are marked with their UN certification then stored for sale and shipment. Pressing further, the Investigators asked if leakproofness testing is performed and were informed no, as there was no need to do that because the new bottles had been leak tested at the factory by the bottle manufacturer (see Inspection Report No. 23248002 at page 8 and Exhibit 27 to Report No. 23248002).

7. After the "rebottling area" the Investigators were shown a section of the warehouse where finished rebottled IBCs were stored. The Investigators observed various types of used IBC cages from major IBC manufacturers, such as Schutz, Mauser, Greif, and others (see Inspection Report No. 23248002 at page 8 and Exhibit 7 to Report No. 23248002).

8. Inside the cages were new plastic bottles manufactured by CORE, and every IBC was marked with a UN certification marking of UN 31HA1 and with Respondent's "M" number, "M6245," as the IBC manufacturer within the UN string and a current manufacturing date of March 2023 (see Inspection Report No. 23248002 at page 8 and Exhibit 8 to Report No. 23248002).

9. The Investigators selected at random an exemplar IBC to examine, which consisted of a steel cage manufactured by Mauser that contained a 275-gallon CORE bottle inside. The cage contained a metal plate affixed and embossed with "Mauser," and the inner plastic bottle was embossed with CORE's "M" number of "M6648," as well as CORE's name and address in Illinois. The UN certification marking on the cage declared Respondent was the manufacturer, as their "M" number of "M6245" was within the UN string. The marking was noted as follows: "UN 31HA1/Y/1122/USA/M6245/3800KG/1725/1041L/58Kg100KPa/1122/1122" (see Inspection Report No. 23248002 at page 8 and Exhibit 7, pages 9-18, and Exhibit 9 to Report No. 23248002).

10. The Investigators pointed out that replacing inner bottles of composite packaging, such as these IBCs, constitutes a remanufactured or repaired IBC that requires leakproofness testing, unless the person performing the repair is a party to a DOT Special Permit, DOT-SP 16323, which exempts that testing (see Inspection Report No. 23248002 at page 8 and Exhibit 27 to Report No. 23248002).

11. The Investigators asked if Respondent was party to the permit. The response from Respondent's Representatives was that Respondent was not party to the permit and were

unaware of any of these requirements (see Inspection Report No. 23248002 at page 8 and Exhibit 27 to Report No. 23248002).

12. Respondent's Representative provided six (6) invoices from a third-party broker, MPH United, LLC and related Bills of Lading (BOLs), denoting the purchase by Respondent and shipment of 275-gallon plastic bottles from CORE in South Holland and Springfield, Illinois to Respondent in Summitville, Indiana. The invoices state that "275-gallon new bottle reconditioned cage UN" were procured, suggesting that bottles and cages were shipped. However, this was clarified to mean the bottles are "intended for reconditioned cages"; the BOLs all indicate that only 275-gallon plastic bottles were the goods on board the transport vehicles:

   a. Invoice 2662 and 2663, both dated January 27, 2023, and related BOLs, each indicted that ninety (90) 275-gallon plastic bottles were the contents of the consignments (see Inspection Report No. 23248002 at page 8 and Exhibit 10 to Report No. 23248002);

   b. Invoice 2718, dated February 10, 2023, and related BOL, indicated that ninety (90) 275-gallon plastic bottles were the contents of the consignment (see Inspection Report No. 23248002 at page 8 and Exhibit 11 to Report No. 23248002);

   c. Invoice 2749, dated February 23, 2023, and related BOL, indicated that ninety (90) 275-gallon plastic bottles were the contents of the consignment (see Inspection Report No. 23248002 at page 8 and Exhibit 12 to Report No. 23248002);

   d. Invoice 2813, dated March 13, 2023, and related BOL, indicated that ninety (90) 275-gallon plastic bottles were the contents of the consignment (see Inspection Report No. 23248002 at page 8 and Exhibit 13 to Report No. 23248002); and

   e. Invoice 2861, dated March 26, 2023, and related BOL, indicated that ninety (90) 275-gallon plastic bottles were the contents of the consignment (see Inspection Report No. 23248002 at page 9 and Exhibit 14 to Report No. 23248002).

13. Respondent demonstrated an active history of vending and shipping similar remanufactured 275-gallon IBCs with new CORE bottles in various manufacturers' reconditioned cages. Respondent's Representative provided three (3) company invoices, BOLs, and related documents, denoting the sale and shipment of such IBCs from Respondent to their customers. Each invoice identifies the contents as "275 Gallon New Bottle Reconditioned Cage UN Certified":

   a. STS Invoice number 8214, dated March 16, 2023, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to Morral Companies, 132 Postle Street, Morral, Ohio 43337 (see Inspection Report No. 23248002 at page 9 and Exhibit 15 to Report No. 23248002);

   b. STS Invoice number 8154, dated February 27, 2023, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to Geo Pfau's Sons Co., 800 Wall Street, PO Box 7, Jeffersonville, Indiana 47130 (see Inspection Report No. 23248002 at page 9 and Exhibit 16 to Report No. 23248002); and

c. STS Invoice number 8042, dated December 22, 2022, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to Micronutrients, 1950 Stout Field W. Drive, Indianapolis, Indiana 46241 (see Inspection Report No. 23248002 at page 9 and Exhibit 17 to Report No. 23248002).

14. The Investigators reviewed the appropriate sections of the HMR pertaining to IBC repair and leakproofness testing with Respondent's Representatives and informed them they should not vend anymore of these IBC units until the issues of cross bottling and leakproofness testing could be corrected (see Inspection Report No. 23248002 at page 9 and Exhibit 27 to Report No. 23248002).

15. On or about December 22, 2022; February 27, 2023; and March 16, 2023, Respondent remanufactured, repaired, represented, marked, and sold composite Intermediate Bulk Containers (IBCs), certified to UN 31HA1, as meeting the requirements of the Hazardous Materials Regulations (HMR), when the leak proofness test was not conducted, in violation of 49 CFR §§ 171.2(a), (c), (g), (h), & (j); 178.2(b); 178.813(c); 180.3(a); and 180.352(b)(1) & (d)(ii).

- Please see Inspection/Investigation Report Number 23248002 at pages 7-9, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 3

Inspecting, testing, marking, and selling composite Intermediate Bulk Containers (IBCs), certified to UN 31HA1, which had been remanufactured, repaired, or had routine maintenance performed, as meeting the requirements of the Hazardous Materials Regulations (HMR), when the IBCs had been marked with incorrect and unauthorized UN certification markings, in violation of 49 CFR §§ 171.2(a), (c), (g), (h) & (j); 178.2(b); 178.703(a); 180.3(a); and 180.352(b)(2)(i).

Regulatory Standard

1. 49 CFR § 180.352(b)(2)(i) states: "The IBC is marked in accordance with requirements in 178.703 of this subchapter. Missing or damaged markings, or markings difficult to read must be restored or returned to original condition."

Factual Allegations/Averments

1. As part of the tour of production areas, the Investigators were shown an IBC reconditioning line where 275 and 330-gallon composite UN IBCs of various manufacturers such as Schutz, Greif, Encore, Centurion, and more were processed for

reuse. Each IBC unit was stripped of all labels and markings, including UN certification markings. IBCs are washed out, dried, inspected both internally and externally, leakproofness tested by means of a pressure differential apparatus at or above 2.9 psi, and then new UN certification markings applied to each IBC (see Inspection Report No. 23248002 at page 10 and Exhibit 18 to Report No. 23248002).

2. Respondent's Representative provided an exemplar of the UN certification markings that are typically applied to each reconditioned IBC, regardless of the manufacturer, depending on capacity (see Inspection Report No. 23248002 at page 10 and Exhibit 19 to Report No. 23248002).

3. 275-gallon IBCs are marked "UN 31HA1/T/0323/USA/M6245/3800KG/1725/1041/58Kg100KPa/0323/0323" and 330-gallon IBCs are marked "UN 31HA1/Y/0323/USA/M6245/3800KG/2038/1250L/58Kg/100KPA/0323/0323" (see Inspection Report No. 23248002 at page 10 and Exhibit 19 to Report No. 23248002).

4. Marking IBCs in this way gives the appearance that Respondent was the original manufacturer of all the different manufacturers' IBCs. Respondent's "M" number "M6245" is shown in the UN string, and the original date of manufacture was the current month and year that reconditioning occurred because Respondent had removed the original manufacturers' certification markings, including dates, and replaced them with their own (see Inspection Report No. 23248002 at page 10 and Exhibit 8 to Report No. 23248002).

5. The Investigators were also shown a finished goods storage area of reconditioned IBCs, which contained a myriad of IBC designs, such as Mauser units and Schutz units, and cross bottle designs, such as Schutz bottles in Mauser cages and vice versa. Each design, however, was marked with the aforementioned UN certification from Respondent, showing them as the original manufacturer and date of manufacture was the date reconditioning occurred (see Inspection Report No. 23248002 at page 11 and Exhibit 20 to Report No. 23248002).

6. Respondent demonstrated an active history of vending and shipping similar reconditioned 275 and 330-gallon UN IBCs marked incorrectly. Respondent's Representative provided three (3) company Invoices, BOLs, and related documents, denoting the sale and shipment of such IBCs from Respondent to their customers. Each Invoice identifies the contents as "Reconditioned Bottle Reconditioned Cage UN Certified":

    a. STS Invoice number 8234, dated March 27, 2023, and related BOL, denoting that sixty (60) 330-gallon IBC units were sold and shipped from STS to Solutions Plus, Inc. 3907 Bach-Buxton Road, Amelia, Ohio 45102 (see Inspection Report No. 23248002 at page 11 and Exhibit 21 to Report No. 23248002);

    b. STS Invoice number 8242, dated March 24, 2023, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to Evans Adhesive Corporation, Ltd., 925 Old Henderson Road, Columbus, Ohio 43320 (see Inspection Report No. 23248002 at page 11 and Exhibit 22 to Report No. 23248002); and

c. STS Invoice number 8038, dated January 10, 2023, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to NutriQuest, 310 South Small Street, Brunswick, MO 65236 (see Inspection Report No. 23248002 at page 11 and Exhibit 23 to Report No. 23248002).

7. This unauthorized marking was also applied to the cross bottled IBC designs and new CORE bottles installed in cages, without leakproofness testing, as discussed above, and all designs were sold to customers incorrectly marked (see Inspection Report No. 23248002 at page 11 and Exhibits 4, 7, 15, 16, and 17 to Report No. 23248002).

8. The Investigators pointed out to Respondent's Representatives that removal of the original manufacturers' UN certification markings from the IBCs was not authorized. The removal makes it impossible to track the history of those IBCs for periodic testing and who the actual manufacturers were and the beginning of service life (see Inspection Report No. 23248002 at page 11 and Exhibit 27 to Report No. 23248002).

9. Additionally, the Investigators explained that Respondent's replacement marking shows them as the manufacturer, when they were not, and indicates the service life began on the date of reconditioning, repair, testing, etc., which is inaccurate. Any certification markings that are removed must be replicated exactly and replaced. The Investigators thoroughly discussed the IBC marking requirements for retest, inspection, and repair, verses original certification marking prior to concluding this inspection (see Inspection Report No. 23248002 at page 11 and Exhibit 27 to Report No. 23248002).

10. On or about December 22, 2022; January 10, 2023; February 27, 2023; and March 16, 24, and 27, 2023, Respondent inspected, tested, marked, and sold composite Intermediate Bulk Containers (IBCs), certified to UN 31HA1, which had been remanufactured, repaired, or had routine maintenance performed, as meeting the requirements of the Hazardous Materials Regulations (HMR), when the IBCs had been marked with incorrect and unauthorized UN certification markings, in violation of 49 CFR §§ 171.2(a), (c), (g), (h) & (j); 178.2(b); 178.703(a); 180.3(a); and 180.352(b)(2)(i).

- Please see Inspection/Investigation Report Number 23248002 at pages 10-11, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 4

Performing routine maintenance, remanufacturing, repairing, inspecting, testing, marking, and selling composite Intermediate Bulk Containers (IBCs), certified to UN 31HA1, as meeting the requirements of the Hazardous Materials Regulations (HMR), when complete and accurate records of these functions were not maintained as required, in violation of 49 CFR §§ 171.2(a), (c), (g), (h), & (j); 180.3(a); and 180.352(g).

Regulatory Standard

1. 49 CFR § 180.352(g) states:

> "(1) The owner or lessee of the IBC must keep records of periodic retests, initial and periodic inspections, and tests performed on the IBC if it has been repaired or remanufactured.
>
> (2) Records must include design types and packaging specifications, test and inspection dates, name and address of test and inspection facilities, names or name of any persons conducting test or inspections, and test or inspection specifics and results.
>
> (3) Records must be kept for each packaging at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test. These records must be made available for inspection by a representative of the Department on request."

Factual Allegations/Averments

1. As part of the record review during this inspection, the Investigators requested copies of requalification records for IBCs that had been reconditioned, repaired, inspected, and tested, as observed in the production areas (see Inspection Report No. 23248002 at page 12 and Exhibits 4 and 18 to Report No. 23248002).
2. Respondent's Representative provided copies of "Daily Production" records from the beginning of January to March 17, 2023, which denoted quantities rebottled, units scrapped, bottles removed from cages, trailers loaded and unloaded, and customer information (see Inspection Report No. 23248002 at page 12 and Exhibit 24 to Report No. 23248002).
3. The Investigators noted these documents appeared to be more related to production reports than recordkeeping requirements for qualification and maintenance of UN IBCs. The reports did not describe several basic elements required by the HMR for record retention, such as the design types and packaging specifications of IBCs, types of inspections and tests performed with specifics and results, and name and address of the inspection and test facility, at a minimum (see Inspection Report No. 23248002 at page 12 and Exhibit 24 to Report No. 23248002).
4. The Investigators asked if there were any additional requalification records generated to document UN IBC maintenance, inspection, testing, and repair and were informed by Respondent's Representative that no other records have historically been maintained (see Inspection Report No. 23248002 at page 12 and Exhibit 27 to Report No. 23248002).
5. Respondent demonstrated an active history of vending and shipping reconditioned 275 and 330-gallon UN IBCs which had been reconditioned, inspected, tested, then returned

to service. Respondent's Representative provided three (3) company invoices, BOLs, and related documents, denoting the sale and shipment of such IBCs from Respondent to their customers. Each Invoice identifies the contents as "Reconditioned Bottle Reconditioned Cage UN Certified":

a. STS Invoice number 8234, dated March 27, 2023, and related BOL, denoting that sixty (60) 330-gallon IBC units were sold and shipped from STS to Solutions Plus, Inc. 3907 Bach-Buxton Road, Amelia, Ohio 45102 (see Inspection Report No. 23248002 at page 13 and Exhibit 21 to Report No. 23248002);

b. STS Invoice number 8242, dated March 24, 2023, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to Evans Adhesive Corporation, Ltd., 925 Old Henderson Road, Columbus, Ohio 43320 (see Inspection Report No. 23248002 at page 13 and Exhibit 22 to Report No. 23248002); and

c. STS Invoice number 8038, dated January 10, 2023, and related BOL, denoting that sixty (60) 275-gallon IBC units were sold and shipped from STS to NutriQuest, 310 South Small Street, Brunswick, MO 65236 (see Inspection Report No. 23248002 at page 13 and Exhibit 23 to Report No. 23248002).

6. The Investigators reviewed the appropriate section of the HMR pertaining to record retention for IBC qualification and maintenance with Respondent's Representatives prior to concluding the inspection (see Inspection Report No. 23248002 at page 13 and Exhibit 27 to Report No. 23248002).

7. On or about January 10, 2023; March 24 and 27, 2023, Respondent performed routine maintenance, remanufactured, repaired, inspected, tested, marked, and sold composite Intermediate Bulk Containers (IBCs), certified to UN 31HA1, as meeting the requirements of the Hazardous Materials Regulations (HMR), when complete and accurate records of these functions were not maintained as required, in violation of 49 CFR §§ 171.2(a), (c), (g), (h), & (j); 180.3(a); and 180.352(g).

- Please see Inspection/Investigation Report Number 23248002 at pages 12-13, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 5

Performing routine maintenance, repairing, remanufacturing, inspecting, testing, marking, representing, and selling composite Intermediate Bulk Containers (IBCs), certified to UN 31HA1, while failing to notify persons to whom the packaging is transferred of all the requirements not met at the time of transfer, including proper closure instructions needed to satisfy and maintain performance test requirements, in violation of 49 CFR §§ 171.2(a), (c), (g), (h) & (j); and 178.2(b) & (c).

Regulatory Standard

1. 49 CFR § 178.2(c) states, in part" "The manufacturer or other person certifying compliance with the requirements of this part, and each subsequent distributor of that packaging shall — (1) Notify in writing each person to whom that packaging is transferred — (i) Of all requirements in this part not met at the time of transfer, and (ii) With information specifying the type(s) and dimensions of the closures, including gaskets and any other components needed to ensure that the packaging is capable of successfully passing the applicable performance tests. This information must include any procedures to be followed, including closure instructions for inner packaging's and receptacles, to effectively assemble and close the packaging for the purpose of preventing leakage in transportation."

Factual Allegations/Averments

1. Continuing with the document review, the Investigators requested validation that Respondent had provided closure notifications to each of their customers, to whom they had sold and shipped the 275 and 330-gallon UN Standard IBCs on company invoices and BOLs, as identified above. Each invoice states the IBCs were "UN Certified" (see Inspection Report No. 23248002 at page 14 and Exhibits 15-17 and 21-23 to Report No. 23248002).
2. Respondent's Representative was unable to provide evidence that closure notifications had been provided to those customers by any means, and stated the company does not make it a practice to do so, as they were unaware that they were required to (see Inspection Report No. 23248002 at page 14 and Exhibit 27 to Report No. 23248002).
3. Respondent was in possession of closure instructions for the plastic bottles they install in the IBC cages they procure from Core Plastic International, Inc., as Respondent's Representative provided a copy from her files. These instructions provide torque values and guidance for proper assembly of the six-inch top caps, two-inch plugs fitted into some caps, and the bottom discharge valve (see Inspection Report No. 23248002 at page 14 and Exhibit 25 to Report No. 23248002).
4. They Investigators explained the importance and responsibility of providing closure information to users of UN packaging to Respondent's Representatives and provided options to accomplish this, i.e., printed on the invoices, included with packing slips, etc. (see Inspection Report No. 23248002 at page 14 and Exhibit 27 to Report No. 23248002).
5. On or about December 22, 2022; January 10, 2023; February 27, 2023; and March 16, 24, and 27, 2023, Respondent performed routine maintenance, repaired, remanufactured, inspected, tested, marked, represented, and sold composite Intermediate Bulk Containers (IBCs), certified to UN 31HA1, while failing to notify persons to whom the packaging is transferred of all the requirements not met at the time of transfer, including proper

closure instructions needed to satisfy and maintain performance test requirements, in violation of 49 CFR §§ 171.2(a), (c), (g), (h) & (j); and 178.2(b) & (c).

- Please see Inspection/Investigation Report Number 23248002 at pages 14-15, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 6

Allowing employees to perform functions subject to the requirements of Hazardous Materials Regulations (HMR), when the employees had not received initial hazardous materials training in the areas of general awareness, function-specific, safety, and security awareness, in violation of 49 CFR §§ 171.2(a) & (b); 172.702(a) & (b); 172.704(a)(1), (2), (4); and 172.704(c)(1).

Regulatory Standard

1. 49 CFR § 172.704(a) states, in part: "That each hazardous materials employee shall be provided general awareness, function-specific, safety (when safety training is required), and security awareness, training."
2. 49 CFR § 172.704(c)(1) states, in part: "Initial training. A new hazmat employee, or a hazmat employee who changes job functions may perform those functions prior to the completion of training provided —

    (i) The employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and

    (ii) The training is completed within 90 days after employment or a change in job function."

Factual Allegations/Averments

1. Continuing with the record review, the Investigators requested hazardous materials training documents and training records for the employees that are considered hazardous materials employees at Respondent's facility (see Inspection Report No. 23248002 at page 16 and Exhibit 27 to Report No. 23248002).
2. Respondent is a hazardous materials employer, involving their employees with hazardous materials functions such as remanufacturing, repairing, inspecting, testing, and vending UN Standard packaging, as evidenced by the statements made, photographs obtained, and documents collected during the inspection (see Inspection Report No. 23248002 at page 16 and Exhibits 2-4, 7-8, and 11-27 to Report No. 23248002).

3. However, no hazardous materials training documents or training records were provided for any employees, as the company has not implemented a hazardous materials training program (see Inspection Report No. 23248002 at page 16 and Exhibit 27 to Report No. 23248002).

4. Respondent's Representatives stated they were unaware of the requirement to provide hazardous materials training to approximately fifteen (15) employees involved with the UN IBCs and asked for guidance of how to accomplish this training. An employee roster provided by Respondent's Representative denotes fifteen (15) employees are involved with various aspects of UN IBC processing and sales (see Inspection Report No. 23248002 at page 16 and Exhibits 26 and 27 to Report No. 23248002).

5. The Investigators discussed the hazardous materials training requirements of 49 CFR §§ 172.700 – 172.704 with Respondent's Representatives and provided copies of agency developed outreach materials then directed their attention to the online training modules found on the agency's public website, "hazmat.dot.gov." The Investigators also suggested third-party training providers (see Inspection Report No. 23248002 at page 17 and Exhibit 27 to Report No. 23248002).

6. On or about December 22, 2022; January 10, 2023; February 27, 2023; and March 16, 24, and 27, 2023, Respondent allowed employees to perform functions subject to the requirements of Hazardous Materials Regulations (HMR), when the employees had not received initial hazardous materials training in the areas of general awareness, function-specific, safety, and security awareness, in violation of 49 CFR §§ 171.2(a) & (b); 172.702(a) & (b); 172.704(a)(1), (2), (4); and 172.704(c)(1).

- Please see Inspection/Investigation Report Number 23248002 at pages 16-17, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 7

Performing functions under the authority of a DOT approval, after that approval had expired, and failing to comply with a certain provision of that approval, in violation of 49 CFR §§ 171.2(a), (c); and DOT M6245, Item 2.

Regulatory Standard

1. 49 CFR § 172.2(c) states: "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 this subchapter, an approval issued under this subchapter, 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. DOT M6245 Item 2: "You must notify this office of any change in facility name, address, or management within 20 days of the change."

Factual Allegations/Averments

1. At the conclusion of the document review, the Investigators noted that Respondent's DOT approval to mark their "M" number symbol of "M6245" to packaging had expired four years ago, and Respondent had relocated to this location from a different address listed in the approval (see Inspection Report No. 23248002 at page 18 and Exhibit 8 to Report No. 23248002).
2. The approval letter shows the approval was issued March 19, 2014, and expired March 19, 2019, and Respondent was unable to provide a copy of a current approval or evidence they had applied for renewal before expiration (see Inspection Report No. 23248002 at page 18 and Exhibit 8 to Report No. 23248002).
3. The approval letter shows the physical address of Respondent is 17128 North 150 East, Summitville, Indiana 46070, and the approval states the symbol of M6245 may be used to mark packaging at that location only. Approximately two years ago, Respondent consolidated locations and based all operations here at 401 North Main Street, Summitville, Indiana 46070, but failed to notify the agency approvals office within twenty days of the change (see Inspection Report No. 23248002 at page 18 and Exhibit 8 to Report No. 23248002).
4. With both issues, Respondent's Representative stated these were oversights, which will be corrected (see Inspection Report No. 23248002 at page 18 and Exhibit 27 to Report No. 23248002).
5. Respondent had continued to mark the expired "M" number "M6245" on UN IBCs at this location, as observed and photographed during this inspection (see Inspection Report No. 23248002 at page 18 and Exhibits 7, 19, and 20 to Report No. 23248002).
6. Respondent had sold and shipped UN IBCs with the marked expired symbol of "M6245" from this location, as evidenced from the invoices and BOLs collected during the inspection (see Inspection Report No. 23248002 at page 19 and Exhibits 15-17 and 21-23 to Report No. 23248002).
7. On or about December 22, 2022; January 10, 2023; February 27, 2023; and March 16, 24, and 27, 2023, Respondent performed functions under the authority of a DOT approval, after that approval had expired, and failing to comply with a certain provision of that approval, in violation of 49 CFR §§ 171.2(a), (c); and DOT M6245, Item 2.

- Please see Inspection/Investigation Report Number 23248002 at pages 18-19, 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 April 27, 2023, 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's Representative stated the company is exploring options with third-party test labs and with their trade association, as they recently became a member of Recycled Industrial Packaging Association (RIPA). No further communication was received (see Inspection Report No. 23248002 at page 20 and Exhibit 28 to Report No. 23248002).

- Violation No.2: Respondent's Representative stated the company is working with a consultant to apply for party status DOT-SP 16323, which would exempt them from this requirement. No further communication was received (see Inspection Report No. 23248002 at page 20 and Exhibit 28 to Report No. 23248002).

- Violation No.3: Respondent's Representative stated the company now leaves all original IBC manufacturers' certification markings intact and adds an additional adhesive label next to those with their company's reconditioning marking – for example "USA/M6425/MMYY/MMYY." No further communication was received (see Inspection Report No. 23248002 at page 20 and Exhibit 28 to Report No. 23248002).

- Violation No.4: Respondent's Representative provided a revised production log, which now contains the required information for maintenance of UN IBCs, such as inspections, tests, repairs, markings to be applied, and IBC manufacturer information. Missing is the UN specification type, i.e., UN 31HA1. No further communication was received (see Inspection Report No. 23248002 at page 20 and Exhibit 28 to Report No. 23248002).

- Violation No.5: Respondent's Representative stated the company has now provided closure notifications via email to their customers and has also began attaching those notifications to their invoices. Additionally, the company intends on posting all the closure notifications to their website after the site is enhanced. No further communication was received (see Inspection Report No. 23248002 at page 20 and Exhibit 28 to Report No. 23248002).

- Violation No.6: Respondent's Representative explained and provided documented evidence that the company has provided training and testing in these areas and created proper training records certifying their employees have been trained. Photographs were also provided depicting the new training binders, training records, and marking and labeling charts posted throughout the office and production areas, including a poster explaining UN Standard certification markings (see Inspection Report No. 23248002 at pages 20-21 and Exhibit 28 to Report No. 23248002).

- Violation No.7: Respondent provided a current copy of their renewed letter of approval to use their "M" number "M6245" until April 5, 2028, and the letter has been changed to reflect the correct street address (see Inspection Report No. 23248002 at page 21 and Exhibit 28 to Report No. 23248002).

Based on this information and documentation, the proposed penalty has been reduced by 0% for Violation 1, 0% for Violation 2, 10% for Violation 3, 20% for Violation 4, 5% for Violation 5, 25% for Violation 6, and 25% for Violation 7 (as indicated below).

In order to justify further reduction of the proposed penalty, Respondent must submit additional information and documentation (such as design qualification test reports; proof of party status to DOT-SP 16323; pictures of reconditioned IBCs showing both the original IBC manufacturers' certification markings intact alongside Respondent's reconditioning marking; a maintenance record log with a place to include information on the UN specification type; copies of recent invoices with closure instructions).

<u>Financial Status</u>

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	$7,500	+$0	-$0	$7,500
2	$5,000	+$0	-$0	$5,000
3	$9,000	+$0	-$900	$8,100
4	$3,700	+$0	-$740	$2,960
5	$3,100	+$0	-$155	$2,945
6	$6,000	+$0	-$1,500	$4,500
7	$1,200	+$0	-$300	$900
TOTAL	$35,500	+$0	-$3,595	$31,905

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 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.

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. 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.