



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

Office of
Chief Counsel

1200 New Jersey Avenue, S.E.
East Building, 2nd Floor (PHC-10)
Washington, D.C. 20590-0001
Phone: (202) 366-4400
Fax: (202) 366-7041
E-mail: brittany.besser@dot.gov

***Hazardous Materials Safety
Law Division***

NOTICE OF PROBABLE VIOLATION

Date Issued: June 3, 2025

PHMSA Case No.: 25-0062-SH-SO

Respondent: Axalta Coating Systems, LLC
1717 West English Road
High Point, North Carolina 27262
ATTN: Michael Sears, EHS Manager

No. of Alleged Violations: 3

Total Proposed Assessment: \$8,800

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: 2025.06.03 10:12:36 -04'00'

Brittany S. Besser, Attorney

Enclosures: Addendum A
Addendum B
Addendum C

SERVICE BY ELECTRONIC MAIL

ADDENDUM A

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GENERAL ALLEGATIONSGeneral Factual Allegations/Averments

1. On November 21 and 22, 2024, PHMSA's Investigator conducted a compliance inspection at Respondent's facilities in High Point, North Carolina (see Inspection Report No. 24626037 at page 1).
2. Janice Watkins-Harris, EHS Coordinator, and Michael Sears, EHS Interim Manager, represented the company during the inspection, which included a facility tour, review of company hazardous material shipping processes, and a documentation review (see Inspection Report No. 24626037 at page 1).
3. Respondent manufactures hazardous materials and redistributes of Class 3, 4.1, 6, 8, and 9 and ships in 5-gallon pails and 55-gallon drums by highway and air. Respondent is a large quantity hazardous waste generator and utilizes contract carriers such as R&L, Southeastern, and FedEx (see Inspection Report No. 24626037 at page 1).
4. As an offeror of hazardous materials, Respondent is a regulated entity subject to the HMR and to the jurisdiction of the Secretary of Transportation, PHMSA's Associate Administrator for Hazardous Materials Safety, and PHMSA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 CFR § 107.301).

SPECIFIC ALLEGATIONSProbable Violation No. 1

Allowing employees to perform a function subject to the requirements of federal hazardous materials regulations, when the employees had not received initial and or recurrent hazardous materials training in the areas of general awareness, function-specific, safety, and security awareness, as required by 49 CFR § 172.704(c)(2), in violation of 49 CFR §§ 171.2(a), (b), & (e); 172.702(a); 172.704(a)(1)-(4); 172.704(c)(1)-(2); 172.704(d).

Regulatory Standard

1. 49 CFR § 172.702 states, in part: "(a) 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: "Each hazardous materials employee shall be provided general awareness, function-specific, safety, and security awareness training."
3. 49 CFR § 172.704(c)(2) states, in part: "Recurrent training, a hazmat employee shall receive the training required by this subpart at least once every three years."

Factual Allegations/Averments

1. During the inspection, the Investigator requested training records for hazmat employee Raymond Bailey. Respondent's Representative stated that "the employee has not had training in many years." However, Respondent's Representative did provide a training certificate, dated November 5, 2024, confirming testing and training in accordance with 49 CFR § 172.704 of the transportation of Hazardous Materials, though the specifics of the content of that training were not outlined (see Inspection Report No. 24626037 at page 4 and Exhibit 3, page 2, to Report No. 24626037).
2. The Investigator requested training records from Respondent's Representative for Oliver Sutton, the Interim Warehouse Manager, who signed shipping papers for Respondent. The Investigator then asked to speak with Mr. Sutton on November 22, 2024, and the employee was made available to the Investigator. In the presence of EHS Manager, Michael Sears, Mr. Sutton was asked if he had completed training, and he stated that he has not had that training in many years. No training records were made available to the Investigator for Mr. Sutton (see Inspection Report No. 24626037 at page 5).
3. The Investigator requested, obtained, and reviewed shipping papers and Bills of Lading (BOL) provided by Respondent's Representative:
 - a. BOL number 6100964059, dated November 21, 2024, for hazardous materials shipment from Axalta Coating Systems, LLC, 1908 Elm Street, High Point, NC, 27260 to Wellborn Cabinet, Inc. 38669 Hwy 77, Ashland, AL, 26351, for four (4) 1A1 steel drums containing "UN1193 Ethyl Methyl Ketone (Methyl Ethyl Ketone) 3, II," weighing 1648.89 lbs., four (4) drums and ninety-six (96) pails of "UN1263 Paint Related Material 3, II" weighing 5523.77 lbs.; nineteen (19) 1A2 steel drums, ninety-six (96) pails, and ninety-six (96) 1A2 steel pails of "UN1263 Paint, 3, II," weighing 18996.63 lbs.; and twenty-four (24) 1A1 steel drums and eight (8) 1A2 steel pails of "UN1262 Paint 3, III," weighing 9840.67 lbs. (see Inspection Report No. 24626037 at page 4 and Exhibit 2, pages 1-3, to Report No. 24626037);
 - b. BOL number 6100963191, dated November 19, 2024, for hazardous materials shipment from Axalta Coating Systems, LLC, 1908 Elm Street, High Point, NC, 27260 to Springs Industries, Springs Window Fashions, Ste A, 9601 International Blvd., Pharr, TX, 78577, for twenty-one (21) 1A2 steel drums of "UN1263 Paint 3, II," weighing 9386.51 lbs. (see Inspection Report No. 24626037 at page 4 and Exhibit 2, page 4, to Report No. 24626037);
 - c. BOL number 6100964033, dated November 20, 2024, for hazardous materials shipment from Axalta Coating Systems, LLC, 1717 English Road, High Point, NC 27262 to Axalta US Elm Street WHSE 2350, 1908 Elm Street, High Point, NC, 27260, for ninety-six (96) 1H2 plastic pails of "UN1263 Paint Related Material 3, II," weighing 3641.60; ten (10) 1A2 steel drums of "UN1263 Paint 3, II," weighing 4025.95 lbs.; and one-hundred eighteen (118) fiberboard boxes of "UN1263 Paint 3,

II, Ltd. Qty.” weighing 4801.55 lbs. (see Inspection Report No. 24626037 at page 4 and Exhibit 2, page 5, to Report No. 24626037); and

- d. BOL number 6100964586, dated November 20, 2024, for hazardous materials shipment from Axalta Coating Systems, LLC, 1717 English Road, High Point, NC 27262 to Axalta US Elm Street WHSE 2350, 1908 Elm Street, High Point, NC, 27260, for twenty (20) 1A1 steel drums of “Paint and Paint related material, Not Regulated; twelve (12) 1A2 steel drums and one-hundred forty-four (144) 1A2 steel pails of “UN1263 Paint 3, II,” weighing 11803.94 lbs.; one-hundred twenty-six (126) fiberboard boxes of “UN1263 Paint 3, II, Ltd. Qty.,” weighing 4306.90 lbs.; and five (5) pails of “UN1263 Paint, 3, III,” weighing 237.81 lbs. (see Inspection Report No. 24626037 at page 4 and Exhibit 2, page 10, to Report No. 24626037).
4. The Investigator discussed the importance of the four areas of required training with a focus on function-specific training on topics such as package closure and the impact that training has on the safety of transporting hazardous materials in commerce with Respondent’s Representative, who stated that Respondent would take the necessary actions to prevent future violations (see Inspection Report No. 24626037 at page 5).
5. On or about November 19, 20, and 21, 2024, Respondent allowed employees to perform a function subject to the requirements of federal hazardous materials regulations, when the employees had not received initial and or recurrent hazardous materials training in the areas of general awareness, function-specific, safety, and security awareness, as required by 49 CFR § 172.704(c)(2), in violation of 49 CFR §§ 171.2(a), (b), & (e); 172.702(a); 172.704(a)(1)-(4); 172.704(c)(1)-(2); 172.704(d).

- Please see Inspection/Investigation Report Number 24626037 at pages 3-5, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 2

Offering and transporting in commerce a hazardous material, where shipping papers did not include an emergency response telephone number that was capable of timely and reliably relaying information, in violation of 49 CFR §§ 171.2(a)&(b); 172.201(d); and 172.604.

Regulatory Standard

1. 49 CFR § 172.201(d) states: “Emergency response telephone number. Except as provided in 172.604(c), a shipping paper must contain an emergency response telephone number as prescribed in Subpart of this part.”
2. 49 CFR § 172.604(a) states, in part: “A person who offers a hazardous material for transportation must provide an emergency response telephone number, including the area code or international access code, for use in the event of an emergency involving the hazardous material. The telephone number must be — (3) Entered on a shipping paper, as

follows: (i) Immediately following the description of the hazardous material required by subpart C of this part; or (ii) Entered once on the shipping paper in a clearly visible location. This provision may be used only if the telephone number applies to each hazardous material entered on the shipping paper, and if it is indicated that the telephone number is for emergency response information (for example: "EMERGENCY CONTACT: * * *")."

3. 49 CFR § 172.604(a) states, in part: "A person who offers a hazardous material for transportation must provide an emergency response telephone number, including the area code or international access code, for use in the event of an emergency involving the hazardous material. The telephone number must be the number of a person who is either knowledgeable of the hazardous material being shipped and has the comprehensive emergency response and incident mitigation information for that material or has immediate access to a person who possess such knowledge and information."

Factual Allegations/Averments

1. Following the warehouse tour, the Investigator reviewed hazardous waste manifests and found that the hazardous material employee completing the shipping paper included an "Emergency Contact" number that was a company landline telephone number for the EHS Coordinator (see Inspection Report No. 24626037 at page 6).
2. The Investigator requested, obtained, and reviewed Uniform Hazardous Waste Manifest numbers 026664834, dated June 10, 2024; 026666337, dated September 5, 2024; 026666854, dated October 18, 2024; and 000302764, dated October 18, 2024 (see Inspection Report No. 24626037 at pages 6-7 and Exhibit 2, pages 17-20, to Report NO. 24626037).
3. The Emergency Response Phone listed on all forms is 336.802.5731, and that telephone number is the facility desk telephone number belonging to employee Janice Watkins-Harrison (see Inspection Report No. 24626037 at page 6).
4. Ms. Watkins-Harris was present on November 21, 2024, when the Investigator called the number and was answered by the voicemail of Ms. Watkins-Harris (see Inspection Report No. 24626037 at page 6).
5. The Investigator determined that no emergency response mitigation could be provided at the time of the call if a true emergency were occurring because the call was sent to voicemail (see Inspection Report No. 24626037 at page 6).
6. The Investigator discussed the probable violation with Respondent's Representative in detail and the impact the emergency response telephone number has on safety during the transportation of hazardous materials. Respondent's Representative stated she understood the importance and impact on safety and advised that Respondent would take action to current to ensure no future discrepancies occur (see Inspection Report No. 24626037 at page 7).

7. On or about June 10, September 5, and October 18, 2024, Respondent offered and transported in commerce a hazardous material, where shipping papers did not include an emergency response telephone number that was capable of timely and reliably relaying information, in violation of 49 CFR §§ 171.2(a)&(b); 172.201(d); and 172.604.

- Please see Inspection/Investigation Report Number 24626037 at pages 6-8, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 3

Offering and transporting in commerce, a hazardous material in UN certified 55-gallon drums, marked UN 1A2 for PG II hazardous materials, when the drums had not been closed in accordance with the manufacturer's closure notification, in violation of 49 CFR §§ 171.2(a), (b), & (e); 173.22(a)(4); 173.24(b); and 173.24(f)(2), voiding the UN certification.

Regulatory Standard

1. 49 CFR § 173.24(f)(2) states, in part: "...a closure (including gaskets or other closure components, if any) used on a specification packaging must conform to all applicable requirements of the specification and must be closed in accordance with information, as applicable, provided by the manufacturer's notification required by §178.2 of this subchapter."

Factual Allegations/Averments

1. During the warehouse tour, the Investigator observed hazardous materials employee Raymond Bailey filling and closing 1A2 steel drums in the company's designated non-spark Lacquer blending area (see Inspection Report No. 24626037 at page 9).
2. The investigator photographed two (2) breakaway sparkless-steel drum torque wrenches present during the inspection – one was wrapped in yellow tape, and one was wrapped in red tape (see Inspection Report No. 24626037 at page 9 and Exhibit 6, pages 2, 24, and 25, to Report No. 24626037).
3. The Investigator could not determine the torque value by visual inspection on either tool and asked Mr. Bailey to demonstrate how he closed the 55-gallon 1A2 steel drum. The Investigator asked Mr. Bailey how tightly he tightened the bungs and he stated, "I tighten them as tight as I can get them" (see Inspection Report No. 24626037 at page 9).
4. The Investigator photographed both a painted blue top and a painted green top 55-gallon drum, UN1A2/Y1.2/100 USE/M4379/24 and requested and obtained copy of closure instructions for the Mauser Drum from Respondent's Representative (see Inspection Report No. 24626037 at page 10 and Exhibit 6, pages 1-21, and Exhibit 4 to Report No. 24626037).

5. The packaging has a closing ring bolt locking rings. The closure instruction item, number 2, notes to “[t]orque the bolt and nut until the gap between the closing rings is 1/4' gap plus/minus 1/8" but with no bending of the lugs” (see Inspection Report No. 24626037 at page 10 and Exhibit 4 to Report No. 24626037).
6. The Investigator noted and photographed gaps in excess of the closure instructions. The closure instruction item, number 4, then notes: “Ring gap is critical. If it cannot be obtained, utilize the following torques: 55-gallon, 5/16' and 3/8' bolts application torque is not less than 15 ft-lbs., and for 55-gallon, 12 ga, Forged Lug ring with 5/8' bolt application torque is 65-75 ft-lbs.” (see Inspection Report No. 24626037 at page 10 and Exhibit 6, pages 4-6, 8-9, 15-17, 26, 29-31, and 33-34, and Exhibit 4 to Report No. 24626037).
7. The Investigator requested, obtained, and reviewed shipping papers and Bills of Lading (BOL) provided by Respondent’s Representative:
 - a. BOL number 6100964059, dated November 21, 2024, for hazardous materials shipment from Axalta Coating Systems, LLC, 1908 Elm Street, High Point, NC, 27260 to Wellborn Cabinet, Inc. 38669 Hwy 77, Ashland, AL, 26351, for four (4) 1A1 steel drums containing “UN1193 Ethyl Methyl Ketone (Methyl Ethyl Ketone) 3, II,” weighing 1648.89 lbs., four (4) drums and ninety-six (96) pails of “UN1263 Paint Related Material 3, II” weighing 5523.77 lbs.; nineteen (19) 1A2 steel drums, ninety-six (96) pails, and ninety-six (96) 1A2 steel pails of “UN1263 Paint, 3, II,” weighing 18996.63 lbs.; and twenty-four (24) 1A1 steel drums and eight (8) 1A2 steel pails of “UN1262 Paint 3, III,” weighing 9840.67 lbs. (see Inspection Report No. 24626037 at page 10 and Exhibit 2, pages 1-3, to Report No. 24626037);
 - b. BOL number 6100963191, dated November 19, 2024, for hazardous materials shipment from Axalta Coating Systems, LLC, 1908 Elm Street, High Point, NC, 27260 to Springs Industries, Springs Window Fashions, Ste A, 9601 International Blvd., Pharr, TX, 78577, for twenty-one (21) 1A2 steel drums of “UN1263 Paint 3, II,” weighing 9386.51 lbs. (see Inspection Report No. 24626037 at page 10 and Exhibit 2, page 4, to Report No. 24626037);
 - c. BOL number 6100964033, dated November 20, 2024, for hazardous materials shipment from Axalta Coating Systems, LLC, 1717 English Road, High Point, NC 27262 to Axalta US Elm Street WHSE 2350, 1908 Elm Street, High Point, NC, 27260, for ninety-six (96) 1H2 plastic pails of “UN1263 Paint Related Material 3, II,” weighing 3641.60; ten (10) 1A2 steel drums of “UN1263 Paint 3, II,” weighing 4025.95 lbs.; and one-hundred eighteen (118) fiberboard boxes of “UN1263 Paint 3, II, Ltd. Qty.” weighing 4801.55 lbs. (see Inspection Report No. 24626037 at page 10 and Exhibit 2, page 5, to Report No. 24626037); and
 - d. BOL number 6100964586, dated November 20, 2024, for hazardous materials shipment from Axalta Coating Systems, LLC, 1717 English Road, High Point, NC 27262 to Axalta US Elm Street WHSE 2350, 1908 Elm Street, High Point, NC, 27260, for twenty (20) 1A1 steel drums of “Paint and Paint related material, Not

- Regulated; twelve (12) 1A2 steel drums and one-hundred forty-four (144) 1A2 steel pails of “UN1263 Paint 3, II,” weighing 11803.94 lbs.; one-hundred twenty-six (126) fiberboard boxes of “UN1263 Paint 3, II, Ltd. Qty.,” weighing 4306.90 lbs.; and five (5) pails of “UN1263 Paint, 3, III,” weighing 237.81 lbs. (see Inspection Report No. 24626037 at pages 10-11 and Exhibit 2, page 10, to Report No. 24626037).
8. The Investigator also requested and obtained a copy of the last two packaging purchase orders for the drums. The Investigator was unable to determine if the closure instructions were in fact provided to Respondent, as Respondent could only provide copies of the delivery receipts and Bills of Lading for the purchase. The delivery receipt does include an item description of “UN Closure Notifications” (see Inspection Report No. 24626037 at page 11 and Exhibit 5 to Report No. 24626037).
 9. The investigator explained to Respondent’s Representative that failure to close UN certified drums and totes containing hazardous materials in the method prescribed by the manufacturer and certifier was a violation of the Hazardous Materials Regulations, and that such failure also voided the UN certification of those packagings. He stated he understood the violations as noted and stated Respondent would take the necessary actions to prevent future occurrences (see Inspection Report No. 24626037 at page 11).
 10. On or about November 19, 20, and 21, 2024, Respondent offered for and transported in commerce, a hazardous material in UN certified 55-gallon drums, marked UN 1A2 for PG II hazardous materials, when the drums had not been closed in accordance with the manufacturer’s closure notification, in violation of 49 CFR §§ 171.2(a), (b), & (e); 173.22(a)(4); 173.24(b); and 173.24(f)(2), voiding the UN certification.
- Please see Inspection/Investigation Report Number 24626037 at pages 9-11, 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 December 20, 2024 letter, Respondent addressed the actions it has taken to correct the violations alleged in this Notice and to prevent future violations of the HMR. Respondent described and documented its corrective action as follows:

- Violation No.1: Respondent provided a copy of General Awareness & Security Training, which did not meet the content requirements for Safety Training. Respondent provided proof of additional topic trainings (see Inspection Report No. 24626037 at page 12 and Exhibit 7 to Report No. 24626037).
- Violation No.2: Respondent provided a copy of a generated Hazardous Waste Manifest that now lists CHEMTREK, 1-800-424-9300 for emergency response. The Investigator called the number listed and was able to verify a current contract for services (see Inspection Report No. 24626037 at page 12 and Exhibit 5, page 8, to Report No. 24626037).
- Violation No.3: Respondent provided corrective action showing that function-specific package closure training was conducted on December 11, 2024, including for Raymond Bailey, which included supplier's closure instructions and how to identify the correct tools (see Inspection Report No. 24626037 at page 12 and Exhibit 7, pages 3 and 98, to Report No. 24626037).

Based on this information and documentation, the proposed penalty has been reduced by 15% for Violation 1, 25% for Violation 2, and 25% for Violation 3 (as indicated below).

In order to justify further reduction of the proposed penalty, Respondent must submit additional information and documentation (such as proof of Safety training).

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	-\$600	\$3,400
2	\$3,200	+0	-\$800	\$2,400
3	\$4,000	+0	-\$1,000	\$3,000
TOTAL	\$11,200	+0	-\$2,400	\$8,800

ADDENDUM B

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

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

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

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

How do I pay the proposed assessment?

You pay the proposed assessment by:

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

Or

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

Or

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

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

Where do I send my response?

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

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

When is my response due? (§ 107.313)

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

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

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

May I propose a compromise offer? (§ 107.327)

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

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

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

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

May I request an informal conference? (§ 107.317)

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

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

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

How do I appeal an order? (§ 107.325)

You may appeal an order to PHMSA's

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

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

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

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

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

How does PHMSA determine if I have committed a violation?

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

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

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

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

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

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

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

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

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

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

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

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

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

ADDENDUM C

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

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

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

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

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

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

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

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

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