



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

Office of  
Chief Counsel

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**Hazardous Materials Safety  
Law Division**

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**NOTICE OF PROBABLE VIOLATION**

Date Issued: May 6, 2025

PHMSA Case No.: 25-0002-SH-SW

Respondent: CyCan Industries, Inc.  
313 Bell Park Dr.  
Woodstock, GA 30188  
ATTN: Leigh Fragnoli, CEO (lfragnoli@cycanindustries.com)

No. of Alleged Violations: 1 (+1 Quality Control Item)

Total Proposed Assessment: \$5,625 (includes a \$1,875 reduction for corrective action)

The Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you have violated certain provisions of the Federal hazardous materials transportation law, 49 U.S.C. § 5101 *et seq.*, and/or the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What are the maximum and minimum civil penalties that PHMSA can assess? Federal law sets a maximum civil penalty of \$99,756 (or \$232,762 if the violation results in death, serious illness or severe injury, or substantial destruction of property), and a minimum civil penalty of \$601 if the violation concerns training, for each violation of the Federal hazardous materials transportation law or the HMR. Each day of a continuing violation by a shipper or transporter of hazardous materials constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal hazardous materials transportation law or the HMR. Please refer to Addendum B to this Notice for more information concerning these factors, which include corrective actions you take to attain and ensure compliance with the HMR.

How do I respond? You may respond to this Notice in any of three ways:

- (1) By paying the proposed assessment (49 CFR § 107.313(a)(1));
- (2) By sending an informal response, which can include a request for an informal conference (49 CFR § 107.313(a)(2)); or
- (3) By requesting a formal hearing (49 CFR § 107.313(a)(3)).

Details on these three options are provided in Addendum B to this Notice and also online at: (<https://www.phmsa.dot.gov/hazmat/field-operations/nopvresponses>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 CFR §§ 107.307 - 107.331.

When is my response due? You must respond within thirty (30) days from the date that you receive the Notice (49 CFR § 107.313(a)). I may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period (49 CFR §107.313(c)). A response received out of time will not be considered. To assure timely receipt, **PHMSA strongly encourages you to submit your response by e-mail.**

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

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

The Case Exhibits will be supplied to you in a PDF format using DOT's Secure Large File Transfer System via the link in an email to follow, which will be active for the next 30 days. If receiving the Case Exhibits in electronic format creates an undue hardship for you, please contact me.

**SAMANTHA  
ANN VRSCAK**  
Digitally signed by  
SAMANTHA ANN VRSCAK  
Date: 2025.05.06 11:08:36  
-04'00'  
Samantha Vrscak, 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 October 22, 2024, PHMSA's Investigators conducted an inspection at Respondent's facility in Woodstock, Georgia.
2. Leigh Fragnoli, CEO, and Gabe Moore, Technical Director, represented the company and provided necessary information and documentation.
3. Respondent is a manufacturer, filler, and offeror of Division 2.1 and 2.2, and Class 3 adhesives, packaged in aerosol cannisters, boxes, pails, drums, and cylinders. Respondent is also a small generator of hazardous waste.
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 ALLEGATIONS

### Probable Violation No. 1

Filling and offering for transportation in commerce, a hazardous material, in a DOT specification cylinder overdue for periodic requalification, in violation of 49 CFR §§ 171.2(a), (b), (e), and (g); 173.301(a)(6); and 173.335(a) and (d).

### Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by the HMR must perform that function in accordance with the HMR.
2. Pursuant to 49 CFR § 171.2(b), each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of the HMR.
3. Pursuant to 49 CFR § 171.2(e), no person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by the applicable requirements of the HMR.
4. Pursuant to 49 CFR § 171.2(g), no person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of the HMR governing its use in the transportation of a hazardous material in commerce unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of the HMR.

5. Pursuant to 49 CFR § 173.301(a)(6), no person may fill a cylinder overdue for periodic requalification with a hazardous material then offer it for transportation. The prohibition against offering a cylinder for transportation that is overdue for periodic requalification does not apply to a cylinder filled prior to the requalification due date.
6. Pursuant to 49 CFR § 173.335(a), a cylinder filled with a chemical under pressure must be offered for transportation in accordance with the requirements of this section and § 173.301 (except for the cylinder valve cap requirements in §§ 173.301(a)(11) and (12)). In addition, a DOT specification cylinder must meet the requirements in §§ 173.301a, 173.302, 173.302a, and 173.305, as applicable. UN pressure receptacles must meet the requirements of §§ 173.301b, 173.302b, and 173.304b, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.
7. Pursuant to 49 CFR § 173.335(d)(1)-(2), except as otherwise specified in this section, the maximum requalification test period for cylinders transporting chemical under pressure n.o.s. is 5 years. For cylinders with maximum capacity of 450 L or less and filled with materials used as fire extinguishing agents, the maximum requalification test period is 10 years.

#### Factual Allegations/Averments

1. During the inspection, PHMSA's Investigators observed and photographed DOT specification cylinders in Respondent's spray adhesive storage area. The spray adhesives were packaged in 108 L and 216 L DOT 4BW specification cylinders. The adhesives were identified and classed as UN3500, Chemical under pressure, n.o.s., 2.2, or UN3501, Chemical under pressure, flammable, n.o.s., 2.1. In an oral interview, Respondent's representative confirmed the observed cylinders were ready for shipment. (See Report No. 24424016, page 3; Exhibits 2-3).
2. PHMSA's Investigators asked Respondent's representative how long Respondent kept its cylinders in circulation and if someone requalified them. Respondent's representative stated cylinders were kept in circulation for approximately 10 years and that Respondent had a visual-only cylinder requalification approval from PHMSA to visually requalify cylinders. (See Report No. 24424016, page 3; Exhibit 3).
3. The cylinders, filled with spray adhesives by Respondent, were marked as manufactured in April 2016, July 2015, and April 2018, and did not have any additional markings indicating the cylinders had been requalified within the previous five years. Instead, Respondent sent previously used cylinders to a third party for product reclamation and cleaning, who then cleaned and performed a pressure test of the valve. The third-party reclaimer would also attach a sticker showing the assemblers initials, test pressure, and torque. However, the cylinders did not display any requalification markings as prescribed by 49 CFR § 180.213 or other indication they had been requalified within the previous five years as required by 49 CFR § 173.335(d)(1) prior to being filled with Chemical under pressure, n.o.s. (See Report No. 24424016, pages 3-4; Exhibit 2).

4. Respondent provided the following shipping papers in which it offered for transportation in commerce, spray adhesives identified and classed as UN3500, Chemical under pressure, n.o.s., 2.2, or UN3501, Chemical under pressure, flammable, n.o.s., 2.1, in cylinders that had not been requalified every five years as required by 49 CFR § 173.335(d)(1) (See Report No. 24424016, page 4; Exhibit 4):
  - a. Bill of lading #60107383408, date 04/23/2024 – shipment of 72 cylinders of UN3501, Chemical under pressure, flammable, n.o.s. (dimethyl ether, isohexane), 2.1, and 18 cylinders of UN3501, Chemical under pressure, flammable, n.o.s. (methyl acetate), 2.1, from Respondent’s facility to SouthernCarlson – Conyers, in Conyers, GA.
  - b. Bill of lading #60108063132, date 07/18/2024 – shipment of 12 cylinders of UN3501, Chemical under pressure, flammable, n.o.s. (dimethyl ether, isohexane), 2.1, from Respondent’s facility to North American Composites – Portland in Vancouver, WA.
  - c. Bill of lading #60108181862, date 07/31/2024 – shipment of 8 cylinders of UN3501, Chemical under pressure, flammable, n.o.s. (dimethyl ether, propane, butane), 2.1, from Respondent’s facility to Fiberglass Coatings in Fort Lauderdale, FL.
  - d. Bill of lading #60108183693, date 07/31/2024 – shipment of 9 cylinders of UN3501, Chemical under pressure, flammable, n.o.s. (dimethyl ether, isohexane), 2.1, from Respondent’s facility to Heubach Corporation in Athens, TX.
  - e. Bill of lading #60108588182, date 09/19/2024 – shipment of 11 cylinders of UN3500, Chemical under pressure, n.o.s. (carbon dioxide, dichloromethane), 2.2, from Respondent’s facility to Canmade Furniture Products in Toronto, ON.
  - f. Bill of lading #60108816079, date 10/16/2024 – shipment of 42 cylinders of UN3500, Chemical under pressure, n.o.s. (carbon dioxide, dichloromethane), 2.2, from Respondent’s facility to Peterman Lumber, Inc. in Las Vegas, NV.
5. Respondent also provided safety data sheets (SDSs) for each of the shipped materials, confirming they were hazardous and regulated for transportation. (See Report No. 24424016, page 4; Exhibit 5).
6. On or about April 23, July 18 and 31, September 19, and October 16, 2024, Respondent filled and offered for transportation in commerce, a hazardous material, in a DOT specification cylinder overdue for periodic requalification, in violation of 49 CFR §§ 171.2(a), (b), (e), and (g); 173.301(a)(6); and 173.335(a) and (d).

- Please see Inspection/Investigation Report Number 24424016 at pages 3-4, and the exhibits that accompany this report, which are incorporated herein.

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Quality Control Item No. 1

Offering for transportation in commerce, a hazardous material, when the UN standard packaging had not been closed according to the packaging manufacturer or distributor's closure instructions, in violation of 49 CFR §§ 171.2(a), (b), and (e); 173.1(b); 173.22(a)(4); and 173.24(f)(2).

Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by the HMR must perform that function in accordance with the HMR.
2. Pursuant to 49 CFR § 171.2(b), each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of the HMR.
3. Pursuant to 49 CFR § 171.2(e), no person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by the applicable requirements of the HMR.
4. Pursuant to 49 CFR § 173.1(b), a shipment of hazardous materials that is not prepared in accordance with the HMR may not be offered for transportation by air, highway, rail, or water.
5. Pursuant to 49 CFR § 173.22(a)(4)(i), for a DOT specification or UN standard packaging subject to the requirements of Part 178 of the HMR, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of the HMR, as identified by the packaging manufacturer or subsequent distributor, such as applying closures consistent with the manufacturer's closure instructions.
6. Pursuant to 49 CFR § 173.24(f)(2), except as otherwise provided in the HMR, 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 the HMR.

Factual Allegations/Averments

1. During the inspection, PHMSA's Investigators observed and photographed 55-gallon new and reconditioned UN standard steel drums, which Respondent used to package and ship hazardous materials and hazardous waste materials. (See Report No. 24424016, page 5; Exhibits 6-8).
2. PHMSA's Investigators asked how the drums containing hazardous materials were closed prior to transportation. In an oral interview, Respondent's employee explained he closed the drums by using an impact gun or a standard bung wrench, depending on the type of

- drum. He also confirmed he was unable to set a specific torque value to either the impact gun or standard bung wrench. He provided the tools used to close the drums to PHMSA's Investigators. Neither tool had a way to measure torque. (See Report No. 24424016, pages 5-6; Exhibits 6-7).
3. PHMSA's Investigators obtained the closure instructions from the drums' manufacturer, Skolnik. The closure instructions specified that all drums must be closed to a specific torque value in order to satisfy the packaging's performance standards. The UN1A1 (closed head) drums required the bung to be tightened to a torque value of 20 ft.-lbs., while the UN1A2 (open head) drums required the ring and bolt assembly to a torque value of 55-60 ft.-lbs. (See Report No. 24424016, page 6; Exhibit 9).
  4. Respondent provided the following shipping papers for prior shipments in which Respondent offered hazardous materials for transportation in commerce in UN standard drums that had not been closed in accordance with the packaging manufacturer's closing instructions as required by 49 CFR §§ 173.22(a)(4)(i) and 173.24(f)(2) (See Report No. 24424016, page 6; Exhibit 10):
    - a. Bill of lading #60107907666, date 06/27/2024 – shipment of 40 drums of UN1133, Adhesives, 3, PGII, from Respondent's facility to Hood Distribution Memphis in Memphis, TN.
    - b. Bill of lading #60108643809, date 09/25/2024 – shipment of 8 drums of UN1133, Adhesives, 3, PGII, from Respondent's facility to Bradco Supply Co. in Kansas City, MO.
    - c. Waste Manifest #024540699JJK, date 04/11/2023 – shipment of 9 drums of UN1993, Waste, Flammable liquid, n.o.s., 3, PGII, from Respondent's facility to Clean Earth of Alabama in Glencoe, AL.
    - d. Waste Manifest #0254224515JJK, date 07/18/2023 – shipment of 5 drums of UN1993, Waste, Flammable liquid, n.o.s., 3, PGII, from Respondent's facility to Clean Earth of Alabama in Glencoe, AL.
    - e. Waste Manifest #026124218JJK, date 02/03/2024 – shipment of 20 drums of UN1993, Waste, Flammable liquid, n.o.s., 3, PGII, from Respondent's facility to Clean Earth of Alabama in Glencoe, AL.
  5. Following the exit briefing, Respondent explained the closing demonstration by Respondent's employee was used for internal storage only. Respondent also developed and shared a corrective action plan and accompanying documentation in which it provided training for its hazmat employees on proper drum closure procedures and purchased additional torque wrenches and accompanying hardware. (See Exhibit 12 to Report No. 24424016).
  6. On or about April 11 and July 18, 2023, and February 3, June 27, and September 25, 2024, Respondent offered for transportation in commerce, a hazardous material, when the UN standard packaging had not been closed according to the packaging manufacturer or

distributor's closure instructions, in violation of 49 CFR §§ 171.2(a), (b), and (e); 173.1(b); 173.22(a)(4); and 173.24(f)(2).

- Please see Inspection/Investigation Report Number 24424016 at pages 5-7, and the exhibits that accompany this report, which are incorporated herein.

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## **FACTS ALREADY CONSIDERED (UNDER 49 CFR § 107.331) IN SETTING PROPOSED PENALTIES**

### Prior Violations:

When setting a civil penalty, PHMSA will review the respondent's compliance history and determine if there are any finally-adjudicated violations of the HMR initiated within the previous six years. Only cases or tickets that have been finally-adjudicated will be considered (i.e., the ticket has been paid, a final order has been issued, or all appeal remedies have been exhausted or expired). PHMSA will include prior violations that were initiated within six years of the present case; a case or ticket will be considered to have been initiated on the date of the exit briefing for both the prior case and the present case. If multiple cases are combined into a single Notice of Probable Violation or ticket, the oldest exit briefing will be used to determine the six-year period. If a situation arises where no exit briefing is issued, the date of the Notice of Probable Violation or Ticket will be used to determine the six-year period. PHMSA may consider prior violations of the Hazardous Materials Regulations from other DOT Operating Administrations.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows (49 CFR Part 107, Subpart D, Appendix A):

1. For each prior civil or criminal enforcement case—25 percent increase over the pre-mitigation recommended baseline penalty.
2. For each prior ticket—10 percent increase over the pre-mitigation recommended baseline penalty.
3. If a respondent is cited for operating under an expired special permit and previously operated under an expired special permit (as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the civil penalty 100 percent.
4. If a respondent is cited for the exact same violation that it has been previously cited for within the six-year period (in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the baseline for that violation by 100 percent. This increase will apply only when the present violation is identical to the previous violation and applies only to the specific violation that has recurred.

5. A baseline proposed penalty (both for each individual violation and the combined total) will not be increased more than 100 percent on the basis of prior violations.

PHMSA's records do not contain any prior violations by Respondent and PHMSA did not consider any prior violations in determining the proposed assessment for the violation in this Notice.

Penalty Increases for Multiple Counts:

PHMSA generally will treat multiple occurrences that violate a single regulatory provision as separate violations and assess the applicable baseline penalty for each distinct occurrence of the violation. PHMSA will generally consider multiple shipments or, in the case of package testers, multiple package designs, to be multiple occurrences; and each shipment or package design may constitute a separate violation.

PHMSA, however, will exercise its discretion in each case to determine the appropriateness of combining into a single violation what could otherwise be alleged as separate violations and applying a single penalty for multiple counts or days of a violation, increased by 25 percent for each additional instance, as directed by 49 U.S.C. 5123(c). For example, PHMSA may treat a single shipment containing three items or packages that violate the same regulatory provision as a single violation and apply a single baseline penalty with a 50 percent increase for the two additional items or packages; and PHMSA may treat minor variations in a package design for a package tester as a single violation and apply a single baseline penalty with a 25 percent increase for each additional variation in design.

When aggravating circumstances exist for a particular violation, PHMSA may handle multiple instances of a single regulatory violation separately, each meriting a separate baseline or increase the civil penalty by 25 percent for each additional instance. Aggravating factors may include increased safety risks, continued violation after receiving notice, or separate and distinct acts. For example, if the multiple occurrences each require their own distinct action, then PHMSA may count each violation separately (e.g., failure to obtain approvals for separate fireworks devices) (49 CFR Part 107, Subpart D, Appendix A).

Corrective Action:

An important purpose of PHMSA's enforcement program is to bring the regulated community into compliance with the HMR, and to promote ongoing efforts by that community to maintain compliance. In determining the final penalty assessment, PHMSA considers documented evidence of actions taken by a Respondent to correct violations and ensure that they do not recur (49 CFR § 107.331(g)).

In its email correspondence on November 18 and December 12, 2024, 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 developed and shared a corrective action plan and accompanying documentation to inspect and requalify all its DOT 4BW cylinders. Respondent explained it would locate all its cylinders, review manufacture date, and ensure all cylinders that were overdue for periodic requalification or were close to the requalification date would be reinspected and requalified. Respondent also provided a training plan for its hazmat employees and was in the process of replacing cylinders as needed.

Based on this information and documentation, the proposed penalty has been reduced by 25% (as indicated below).

#### Financial Status

Under 49 CFR §107.331 (e) and (f), the proposed penalty may be reduced if Respondent demonstrates that it is unable to pay that penalty, or if payment of the proposed penalty would affect Respondent's ability to continue in business. Respondent's poor financial condition may be a basis for reducing the proposed penalty; a healthy financial condition is *not* a basis for increasing the penalty.

PHMSA has no information that indicates that Respondent is unable to pay the proposed penalty or that payment of the proposed penalty will affect Respondent's ability to continue in business. If Respondent wishes its financial condition to be considered in assessing a penalty for the violation(s) alleged in this Notice, it must provide current financial information (i.e., copies of Respondent's three most current Federal tax returns, an income statement, and a current balance sheet [preferably certified]).

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**TOTAL CIVIL PENALTY PROPOSED**

| Probable Violation | Baseline Penalty | Increase for Priors | Corrective Action | Proposed Penalty |
|--------------------|------------------|---------------------|-------------------|------------------|
| 1                  | \$7,500          | \$0                 | -\$1,875          | \$5,625          |
| QC1                | \$0              | \$0                 | \$0               | \$0              |
| TOTAL              | \$7,500          | \$0                 | -\$1,875          | \$5,625          |

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

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

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

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

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

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

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

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